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No. 15195

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United States  
Court of Appeals  
for the Ninth Circuit

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JAMES HANNIFIN, Claimant of One Electronic  
Pointmaker, Also Known as the JOKER MA-  
CHINE, Serial Number X550378,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee;

and

JAMES HANNIFIN, Claimant of One Electronic  
Pointmaker, Also Known as the BINGO MA-  
CHINE, Serial Number X550518,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record

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PAUL P. O'BRIEN, C

Appeals from the United States District Court for the  
District of Montana, Butte Division



No. 15195

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United States  
Court of Appeals  
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JAMES HANNIFIN, Claimant of One Electronic  
Pointmaker, Also Known as the JOKER MA-  
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Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee;

and

JAMES HANNIFIN, Claimant of One Electronic  
Pointmaker, Also Known as the BINGO MA-  
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Transcript of Record

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Appeals from the United States District Court for the  
District of Montana, Butte Division



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Civil No. 502

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Civil No. 503

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In the United States District Court for the District  
of Montana, Butte Division

Civil No. 502

UNITED STATES OF AMERICA,

Libelant,

vs.

ONE ELECTRONIC POINTMAKER, Also  
Known as the Joker Machine, Serial Number  
X550378,

Libelee.

### AMENDED LIBEL OF INFORMATION

To the Honorable Judge of the United States Dis-  
trict Court for the District of Montana:

Comes now the United States of America, by  
Frank M. Kerr, Assistant United States Attorney  
for the District of Montana, and shows to the  
Court:

1. That the amended libel of information is filed  
by the United States of America and prays the  
seizure and forfeiture of a certain gambling device,  
as hereinafter set forth, in accordance with the  
Transportation of Gambling Devices Act. (15  
U.S.C., Section 1171, et seq.)

2. That during the year 1955, the Buckley Man-  
ufacturing Company knowingly transported an  
Electronic Pointmaker, also known as the Joker  
Machine, Serial Number X550378, to Butte, in the

State and District of Montana, from Chicago, Illinois.

3. That said Electronic Pointmaker, also known as the Joker Machine, Serial Number X550378, was transported in violation of 15 U.S.C., Section 1172, in that said Electronic Pointmaker, also known as the Joker Machine, Serial Number X550378, was a gambling device within the meaning of 15 U.S.C., Section 1171, in that it was a machine and mechanical device, an essential part of which is a drum or reel, with insignia thereon, by the operation of which a person may become entitled to receive, as the result of [3\*] the application of an element of chance, money and property, when said gambling device was transported to Butte, Montana, from Chicago, Illinois, as aforesaid.

4. That the aforesaid gambling device is located at the Eagle Lounge at Butte, in the State and District of Montana, or elsewhere within the jurisdiction of this Court.

5. That by reason of the foregoing, the aforesaid gambling device is held illegally within the jurisdiction of this Court and is liable to seizure, forfeiture and condemnation, pursuant to the provisions of 15 U.S.C., Section 1177.

Wherefore, libelant prays that process in due form of law according to the course of this Court in cases of admiralty jurisdiction, as well as attachment, issue against the aforesaid gambling de-

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\*Page numbering appearing at foot of page of original Certified Transcript of Record.

vice; that all persons having any interest therein be cited to appear herein and answer the aforesaid premises: that this Court decree the forfeiture and condemnation of the aforesaid gambling device, and grant libelant the costs of this proceeding against the claimant of the aforesaid gambling device; that the aforesaid article be disposed of as this Court may direct, pursuant to the provision of said Act and that libelant have such other and further relief as the case may require.

Dated this 7th day of December, 1955.

KREST CYR,

United States Attorney for  
the District of Montana,

/s/ FRANK M. KERR,

Assistant U. S. Attorney for the District of Montana, Proctors for Libelant, the United States of America, Federal Building, Butte, Montana.

[Endorsed]: Filed December 7, 1955.

In the United States District Court for the District  
of Montana, Butte Division

Civil No. 503

UNITED STATES OF AMERICA,

Libelant,

vs.

ONE ELECTRONIC POINTMAKER, Also  
Known as the Bingo Machine, Serial Num-  
ber X550518,

Libelee.

### AMENDED LIBEL OF INFORMATION

To the Honorable Judge of the United States Dis-  
trict Court for the District of Montana:

Comes now the United States of America, by  
Frank M. Kerr, Assistant United States Attorney  
for the District of Montana, and shows to the  
Court:

1. That the amended libel of information is filed  
by the United States of America and prays the  
seizure and forfeiture of a certain gambling device,  
as hereinafter set forth, in accordance with the  
Transportation of Gambling Devices Act. (15  
U.S.C., Section 1171, et seq.)

2. That during the year 1955, the Buckley Man-  
ufacturing Company knowingly transported an  
Electronic Pointmaker, also known as the Bingo  
Machine, Serial Number X550518, to Butte, in the



State and District of Montana, from Chicago, Illinois.

3. That said Electronic Pointmaker, also known as the Bingo Machine, Serial Number X550518, was transported in violation of 15 U.S.C., Section 1172, in that said Electronic Pointmaker, also known as the Bingo Machine, Serial Number X550518, was a gambling device within the meaning of 15 U.S.C., Section 1171, in that it was a machine and mechanical device, an essential part of which is a drum or reel, with insignia thereon, by the operation of which a person may become entitled to receive, as the result of [5] the application of an element of chance, money and property, when said gambling device was transported to Butte, Montana, from Chicago, Illinois, as aforesaid.

4. That the aforesaid gambling device is located at the Eagle Lounge at Butte, in the State and District of Montana, or elsewhere within the jurisdiction of this Court.

5. That by reason of the foregoing, the aforesaid gambling device is held illegally within the jurisdiction of this Court and is liable to seizure, forfeiture and condemnation, pursuant to the provisions of 15 U.S.C., Section 1177.

Wherefore, libelant prays that process in due form of law according to the course of this Court in cases of admiralty jurisdiction, as well as attachment, issue against the aforesaid gambling device; that all persons having any interest therein

be cited to appear herein and answer the aforesaid premises: that this Court decree the forfeiture and condemnation of the aforesaid gambling device, and grant libelant the costs of this proceeding against the claimant of the aforesaid gambling device; that the aforesaid article be disposed of as this Court may direct, pursuant to the provision of said Act and that libelant have such other and further relief as the case may require.

Dated this 7th day of December, 1955.

KREST CYR,

United States Attorney for  
the District of Montana,

/s/ FRANK M. KERR,

Assistant United States Attorney for the District  
of Montana, Proctors for Libelant, the United  
States of America, Federal Building, Butte,  
Montana.

[Endorsed]: Filed December 7, 1955.

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[Title of District Court and Cause.]

Civil No. 502

### MONITION

To Any Special Agent of the Federal Bureau of  
Investigation in the District of Montana—  
Greetings:

Whereas, a libel of information has been filed in  
the United States District Court for the District of  
Montana, on the 6th day of December, 1955, by

Frank M. Kerr, Esquire, Assistant United States Attorney, on behalf of the United States of America, against one Electronic Pointmaker, also known as the Joker Machine, Serial Number X550378, for breach of the laws of the United States, and in particular for the reasons and causes in the libel of information mentioned, and praying the usual process and monition in that behalf to be made, and that all persons interested may be cited, to answer the premises, and all proceedings being had that the Electronic Pointmaker, also known as the Joker Machine, Serial Number X550378, may for the causes in the said libel of information mentioned, be condemned and seized as forfeited, to the use of the United States of America.

You Are Therefore Commanded, to attach the aforesaid gambling device and to detain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be seized, forfeited and condemned pursuant to the prayer of the libel of information, that they be and appear before this Court on the 5th day of January, 1956, at 10:00 a.m. [7] to interpose a claim for the same. And what you shall have done in the premises do you then and there make return thereof together with this writ.

Witness, the Honorable W. D. Murray, Judge, at the City of Butte, Montana, in the District of Montana, this the 6th day of December, 1955, and of

the Independence of the United States of America  
the One Hundred and Eightieth.

E. WARREN TOOLE,  
Clerk U. S. District Court for  
District of Montana,

[Seal] By /s/ HELEN HARSTEAD,  
Deputy Clerk.

Return on Monition Attached.

[Endorsed]: Filed December 6, 1955. [8]

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[Title of District Court and Cause.]

Civil No. 503

### MONITION

To Any Special Agent of the Federal Bureau of  
Investigation in the District of Montana—  
Greetings:

Whereas, a libel of information has been filed in  
the United States District Court for the District of  
Montana, on the 6th day of December, 1955, by  
Frank M. Kerr, Esquire, Assistant United States  
Attorney, on behalf of the United States of Amer-  
ica, against One Electronic Pointmaker, also known  
as the Bingo Machine, Serial Number X550518, for  
breach of laws of the United States, and in particu-  
lar for the reasons and causes in the libel of infor-  
mation mentioned, and praying the usual process  
and monition in that behalf to be made, and that  
all persons interested may be cited, to answer the  
premises, and all proceedings being had that the

Electronic Pointmaker, also known as the Bingo Machine, Serial Number X550518, may, for the causes in the said libel of information mentioned, be condemned and seized as forfeited, to the use of the United States of America.

You Are Therefore Commanded, to attach the aforesaid gambling device and to detain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be seized, forfeited and condemned pursuant to the prayer of the libel of information, that they be and appear before this Court on the 5th day of January, 1956, at 10:00 a.m. [10] to interpose a claim for the same. And what you shall have done in the premises do you then and there make return thereof together with this writ.

Witness, the Honorable W. D. Murray, Judge, at the City of Butte, Montana, in the District of Montana, this the 6th day of December, 1955, and of the Independence of the United States of America the one hundred and eightieth.

E. WARREN TOOLE,

Clerk, United States District Court for the District of Montana,

[Seal] By /s/ HELEN HARSTEAD,

Deputy Clerk.

Return on Monition Attached.

[Endorsed]: Filed December 6, 1955. [11]



[Title of District Court and Cause.]

No. 502

### MARSHAL'S RETURN

United States of America,  
District of Montana—ss.

I hereby certify and return that I received the within Notice of Seizure, Amended Libel of Information on the 13th day of December, 1955, and executed the same, as follows:

That I attached the following-described property, to wit:

Electronic Pointmaker, etc., Serial No.  
X550378.

on the 13th day of December, 1955, at Butte, Montana, and on said date appointed custodian thereof;

That I served copies of the Libel of Information, and Notice of Seizure herein on Daniel Hannifin, James Hannifin, Irving Coombe, Libelee, above-named, on the 13th day of December, 1955, at Butte, Montana.

That I caused said Notice of Seizure, setting forth the substance of the Libel of Information herein to be published once a week for three consecutive weeks in the Butte Daily Post, a newspaper of general circulation published at Butte, Montana, at least three weeks prior to January 5, 1956, fixed by order of Court herein, publisher's affidavit

being hereto attached and made a part of this return.

That I posted a copy of said Notice of Seizure in the most public manner at City Hall, Post Office, and Court House, in the City of Butte, Montana, on the 13th day of December, 1955.

The original Notice of Seizure and the receipt of the custodian above-named is attached hereto and made a part of this return.

Dated this 13th day of December, 1955.

Machines stored in U. S. Marshal's Office, Butte, Montana.

/s/ LOUIS O. ALEKSICH,

United States Marshal for  
the District of Montana,

By /s/ BERNARD J. REILLY,

Deputy. [13]

[Title of District Court and Cause.]

Civil No. 502

### NOTICE OF SEIZURE

Notice Is Hereby Given that an amended libel of information for seizure, forfeiture and condemnation, has been filed by the above-named libelant in the above-entitled Court and cause;

That by order of the Court there has been seized from the Eagle Lounge in Butte, in the State and District of Montana, the following described gambling device, to wit:

One Electronic Pointmaker, also known as the Joker Machine, Serial Number X550378;

That said libelant prays in said libel of information that the above-described property be forfeited and condemned to the United States of America upon the following grounds, to wit:

1. That the amended libel of information is filed by the United States of America and prays the seizure and forfeiture of a certain gambling device, as hereinafter set forth, in accordance with the Transportation of Gambling Devices Act. (15 U.S.C., Section 1171, et seq.)

2. That during the year 1955, the Buckley Manufacturing Company knowingly transported an Electronic Pointmaker, also known as the Joker Machine, Serial Number X550378, to Butte, in the State and District of Montana, from Chicago, Illinois.

3. That said Electronic Pointmaker, also known as the Joker Machine, Serial Number X550378, was transported in violation of 15 U.S.C., Section 1172, in that said Electronic Pointmaker, also known as the Joker Machine, Serial Number X550378, was a gambling [14] device within the meaning of 15 U.S.C., Section 1171, in that it was a machine and mechanical device, an essential part of which is a drum or reel, with insignia thereon, by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, money and property, when said gam-



bling device was transported to Butte, Montana, from Chicago, Illinois, as aforesaid.

4. That the aforesaid gambling device is located at the Eagle Lounge at Butte, in the State and District of Montana, or elsewhere within the jurisdiction of this Court.

5. That by reason of the foregoing, the aforesaid gambling device is held illegally within the jurisdiction of this Court and is liable to seizure, forfeiture and condemnation, pursuant to the provisions of 15 U.S.C., Section 1177.

Notice Is Further Given, That By Order of the Court the libelee herein named and all other persons having or claiming any interest in the aforesaid gambling device seized, or having anything to say why the same should not be condemned and forfeited, appear and file their respective answers, claims and defenses to such libel of information, as amended, for forfeiture and condemnation, setting forth their interest in or claims to said property libeled, with the clerk of the above-named Court at Butte, Montana, on or before the 5th day of January, 1956.

Dated this 9th day of December, 1955.

LOUIS O. ALEKSICH,

United States Marshal for the  
District of Montana,

By /s/ BERNARD J. REILLY,  
Deputy.

[Endorsed]: Filed December 16, 1955. [15]

[Title of District Court and Cause.]

No. 503

### MARSHAL'S RETURN

United States of America,  
District of Montana—ss.

I hereby certify and return that I received the within Notice of Seizure, Amended Libel of Information on the 13th day of December, 1955, and executed the same, as follows:

That I attached the following-described property, to wit:

One Electronic Pointmaker, also known as the Bingo Machine, Serial Number X550518; on the 13th day of December, 1955, at Butte, Montana, and on said date appointed custodian thereof;

That I served copies of the Libel of Information, and Notice of Seizure herein on Daniel Hannifin, James Hannifin, Irving Coombe, Libelee, above-named, on the 13th day of December, 1955, at Butte, Montana.

That I caused said Notice of Seizure, setting forth the substance of the Libel of Information herein to be published once a week for three consecutive weeks in the Butte Daily Post, a newspaper of general circulation published at Butte, Montana, at least three weeks prior to January 5, 1956, fixed by order of Court herein, publisher's

affidavit being hereto attached and made a part of this return.

That I posted a copy of said Notice of Seizure in the most public manner at the Post Office, Court House, and City Hall, in the City of Butte, Montana, on the 13th day of December, 1955.

The original Notice of Seizure and the receipt of the custodian above-named is attached hereto and made a part of this return.

Dated this 13th day of December, 1955.

Machines stored in United States Marshal's Office, Butte, Montana.

LOUIS O. ALEKSICH,

United States Marshal for the  
District of Montana,

By /s/ BERNARD J. REILLY,  
Deputy. [17]

[Title of District Court and Cause.]

Civil No. 503

### NOTICE OF SEIZURE

Notice Is Hereby Given that an amended libel of information for seizure, forfeiture and condemnation, has been filed by the above-named libelant in the above-entitled Court and cause;

That by order of the Court there has been seized from the Eagle Lounge in Butte, in the State and District of Montana, the following described gambling device, to wit:

One Electronic Pointmaker, also known as the Bingo Machine, Serial Number X550518.

That said libelant prays in said libel of information that the above-described property be forfeited and condemned to the United States of America upon the following grounds, to wit:

1. That the amended libel of information is filed by the United States of America and prays the seizure and forfeiture of a certain gambling device, as hereinafter set forth, in accordance with the Transportation of Gambling Devices Act. (15 U.S.C., Section 1171, et seq.)

2. That during the year 1955, the Buckley Manufacturing Company knowingly transported an Electronic Pointmaker, also known as the Bingo Machine, Serial Number X550518, to Butte, in the State and District of Montana, from Chicago, Illinois.

3. That said Electronic Pointmaker, also known as the Bingo Machine, Serial Number X550518, was transported in violation of 15 U.S.C., Section 1172, in that said Electronic Pointmaker, also known as the Bingo Machine, Serial Number X550518, was a gambling [18] device within the meaning of 15 U.S.C., Section 1171, in that it was a machine and mechanical device, an essential part of which is a drum or reel, with insignia thereon, by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, money and property, when said gambling

device was transported to Butte, Montana, from Chicago, Illinois, as aforesaid.

4. That the aforesaid gambling device is located at the Eagle Lounge at Butte, in the State and District of Montana, or elsewhere within the jurisdiction of this Court.

5. That by reason of the foregoing, the aforesaid gambling device is held illegally within the jurisdiction of this Court and is liable to seizure, forfeiture and condemnation, pursuant to the provisions of 15 U.S.C., Section 1177.

Notice Is Further Given, That By Order of the Court the libelee herein named and all other persons having or claiming any interest in the aforesaid gambling device seized, or having anything to say why the same should not be condemned and forfeited, appear and file their respective answers, claims and defenses to such libel of information, as amended, for forfeiture and condemnation, setting forth their interest in or claims to said property libeled, with the clerk of the above-named Court at Butte, Montana, on or before the 5th day of January, 1956.

Dated this 12th day of December, 1955.

/s/ LOUIS O. ALEKSICH,

United States Marshal for  
the District of Montana,

By /s/ BERNARD J. REILLY,  
Deputy.

[Endorsed]: Filed December 16, 1955. [19]

[Title of District Court and Cause.]

Civil No. 502

### CLAIM OF OWNER

Comes now James J. Hannifin, owner of the above-named Electronic Pointmaker in the above-entitled cause, and appears and makes claim to the aforesaid Electronic Pointmaker, Serial Number X550378, also known as the Joker Machine, attached by the United States Marshal for the District of Montana under the process of this Court at the instance of the United States of America, and that the person above-named, James J. Hannifin, is the true and bona fide owner of the said Electronic Pointmaker, and that no other person is the owner thereof;

Wherefore, the said James J. Hannifin, prays to defend accordingly.

/s/ JAMES J. HANNIFIN.

Subscribed and sworn to before me this 5th day of January, 1956.

[Seal]      /s/ J. D. FREEBOURN,

Notary Public for State of  
Montana.

My commission expires on 1/28/58.

[Endorsed]: Filed January 5, 1956. [21]



[Title of District Court and Cause.]

Civil No. 503

CLAIM OF OWNER

Comes now James J. Hannifin, owner of the above-named Electronic Pointmaker in the above-entitled cause, and appears and makes claim to the aforesaid Electronic Pointmaker, Serial Number X550518, also known as the Bingo Machine, attached by the United States Marshal for the District of Montana under the process of this Court at the instance of the United States of America, and that the person above-named, James J. Hannifin, is the true and bona fide owner of the said Electronic Pointmaker, and that no other person is the owner thereof;

Wherefore, the said James J. Hannifin, prays to defend accordingly.

/s/ JAMES J. HANNIFIN.

Subscribed and sworn to before me this 5th day of January, 1956.

[Seal]      /s/ J. D. FREEBOURN,  
Notary Public for the State  
of Montana.

My commission expires on 1/28/58.

[Endorsed]: Filed January 5, 1956. [22]

[Title of District Court and Cause.]

Civil No. 502

### ANSWER

Comes now James J. Hannifin, claimant, and for his answer to the Amended Libel of Information of the United States of America against One Electronic Pointmaker, also known as the Joker Machine, Serial Number X550378, alleges as follows:

1. Admits the allegations of Paragraph One of the Libel.

2. Admits the allegations of Paragraph Two of the Libel.

3. Denies specifically that said Electronic Pointmaker, also known as the Joker Machine, Serial Number X550378, was transported in violation of 15 U.S.C., Section 1172. in that said Electronic Pointmaker, also known as the Joker Machine, Serial Number X550378, is not and was not at the time of its seizure and attachment a gambling device within the meaning of Title 15 U.S.C., Section 1171; admits that said Electronic Pointmaker is and was a machine and mechanical device but specifically denies that an essential part of the same is a drum or reel with insignia thereon, and specifically denies that by the operation of the aforesaid Electronic Pointmaker a person or any person may become entitled to receive as the result of the application of an element of chance or in any other manner money and property or either when said Elec-



tronic [26] Pointmaker was transported to Butte, Montana, from Chicago, Illinois, or at the time of the seizure and attachment or any other time.

4. Admits that said Electronic Pointmaker was located at the Eagle Lounge in Butte, Montana, in the State and District of Montana, but again specifically denies that said Electronic Pointmaker was or is a gambling device under the provisions of Title 15, U.S.C., Section 1171.

5. Denies the allegations of Paragraph Five of the Libel.

Wherefore, Plaintiff Prays that this Honorable Court will dismiss the libel of information aforesaid and condemn the libelant with costs.

O'CONNELL AND McCARVEL,  
JAMES D. FREEBOURN,

By /s/ JERRY J. O'CONNELL,  
Proctors for Claimant.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed January 5, 1956. [27]

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[Title of District Court and Cause.]

Civil No. 503

ANSWER

Comes now James J. Hannifin, Claimant, and for his answer to the Amended Libel of Informa-

tion of the United States of America against One Electronic Pointmaker, also known as the Bingo Machine, Serial Number X550518, alleges as follows:

1. Admits the allegations of Paragraph One of the Libel.

2. Admits the allegations of Paragraph Two of the Libel.

3. Denies specifically that said Electronic Pointmaker, also known as the Bingo Machine, Serial Number X550518, was transported in violation of 15 U.S.C., Section 1172, in that said Electronic Pointmaker, also known as the Bingo Machine, Serial Number X550318, is not and was not at the time of its seizure and attachment a gambling device within the meaning of Title 15 U.S.C., Section 1171; admits that said Electronic Pointmaker is and was a machine and mechanical device but specifically denies that an essential part of the same is a drum or reel with insignia thereon, and specifically denies that by the operation of the aforesaid Electronic Pointmaker a person or any person may become entitled to receive as the result of the application of an element of chance or in any other manner, money or property, or either, when said Electronic [29] Pointmaker was transported to Butte, Montana, from Chicago, Illinois, or at the time of the seizure and attachment or any other time.

4. Admits that said Electronic Pointmaker was located at the Eagle Lounge, in Butte, Montana, in

the State and District of Montana, but again specifically denies that said Electronic Pointmaker was or is a gambling device under the provisions of Title 15 U.S.C., Section 1171.

5. Denies the allegations of Paragraph Five of the Libel.

Wherefore, Plaintiff Prays that this Honorable Court will dismiss the libel of information aforesaid and condemn the libelant with costs.

O'CONNELL and McCARVEL,  
JAMES D. FREEBOURN,

By /s/ JERRY J. O'CONNELL,  
Proctors for Claimant.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed January 5, 1956. [30]

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[Title of District Court and Cause.]

Nos. 502 and 503

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW

The United States of America, having filed a Libel of Information praying for the seizure and condemnation of two Electronic Pointmakers, in individual cases, the same having been seized in Butte, State and District of Montana, by Agents of

the Federal Bureau of Investigation, acting under the authority of the Attorney General.

James J. Hannifin, of Butte, Montana, answered the Libel of Information, alleging ownership of the machines. Claimant Hannifin alleged that the Electronic Pointmaker devices were not gambling devices within the meaning of Title 15 U.S.C., Section 1171. Claimant further admitted that the Electronic Pointmaker devices were and are a machine and mechanical device, but specifically denied that an essential part of the same was a drum or reel with insignia thereon; and further, claimant specifically denied that by the operation of the said Electronic Pointmaker devices a person or any persons may become entitled to receive as a result of the application of the element of chance, or in any other manner, money and property, or either, when said Electronic Pointmakers [33] were transported to Butte, Montana, or at the time of the seizure and attachment or any other time. The claimant admitted to the interstate transportation of the Electronic Pointmaker devices, and prayed the Court to dismiss the Libel of Information filed by the United States of America.

The case was tried before this Court without a jury on January 12, 1956; Mr. Krest Cyr, United States Attorney for the District of Montana; and Mr. Frank M. Kerr, Assistant United States Attorney for the District of Montana, appearing on behalf of the Libelant; and Mr. John M. McCarvel

and Mr. Edwin V. Magagna, appearing on behalf of the claimant.

The parties mutually agreed and stipulated that Civil No. 502 and Civil No. 503 could be tried together, and the evidence adduced as to one Electronic Pointmaker be applied to the other, and from the evidence adduced and the stipulations entered into by counsel, the Court makes the following:

### Findings of Fact

#### I.

That during the year 1955, there was knowingly transported from Chicago, Illinois, to Butte, in the State and District of Montana, the said Electronic Pointmakers, Serials No. X550378 and No. X550518.

#### II.

That said Electronic Pointmakers, and each of them, were and are a machine and mechanical device.

#### III.

That there was and is as an essential part of each Electronic Pointmaker, a drum or reel appearing on the face of each, with insignia thereon, consisting of numerals. [34]

#### IV.

That by the operation of the said Electronic Pointmakers, a person may become entitled to receive, as a result of the application of an element of chance, money.



## V.

That at the time of seizure, the said Electronic Pointmakers were located at the Eagle Lounge in Butte, State and District of Montana; that winning combinations on the machines resulted solely from the application of an element of chance, and winnings on the said Electronic Pointmakers at the Eagle Lounge were paid off in cash.

From the foregoing Findings of Fact the Court draws the following

## Conclusions of Law

## I.

That the Court has jurisdiction of the subject and matter of this proceeding.

## II.

That during the year 1955, the libelees herein were knowingly transported in interstate commerce from Chicago, Illinois, to Butte, in the State and District of Montana.

## III.

That said Electronic Pointmakers, libelees, were and are gambling devices within the meaning of 15 U.S.C., Section 1171, in that they were and are a machine and mechanical device, an essential part of which is a drum or reel, with insignia thereon, by the operation of which a person may become entitled to receive as a result of the application of an element of chance, money, and that said libelees were gambling devices at the time they were trans-

ported to Butte, Montana, from Chicago, Illinois, as aforesaid.

IV.

That the libelees herein were transported in violation of Title 15, U.S.C., Section 1172. [35]

V.

That the aforesaid libelees are held illegally within the jurisdiction of this Court and are liable to seizure, forfeiture and condemnation, pursuant to the provisions of Title 15, U.S.C., Section 1177.

The United States Attorney is directed to prepare a judgment and submit it to the Court in accordance herewith.

Dated this 2nd day of April, 1956.

/s/ W. D. MURRAY,

United States District Judge.

[Endorsed]: Filed April 2, 1956. [36]

In the United States District Court for the  
District of Montana, Butte Division

Civil No. 502

UNITED STATES OF AMERICA,

Libelant,

vs.

ONE ELECTRONIC POINTMAKER, Also  
Known as the Joker Machine, Serial Number  
X550378,

Libelee.

### JUDGMENT AND DECREE OF CONDEMNATION

On the 6th day of December, 1955, a Libel of Information against the above-described One Electronic Pointmaker, also known as the Joker Machine, Serial Number X550378, was filed in this Court on behalf of the United States of America by the United States Attorney and Assistant United States Attorney for the District of Montana. The Libel of Information alleged that said Electronic Pointmaker, proceeded against, was shipped in interstate commerce from Chicago, in the State of Illinois, to Butte, in the State and District of Montana, in violation of the Transportation of Gambling Devices Act (15 U.S.C., Section 1171, et seq.). Pursuant to Monition issued by this Court, the Special Agents of the Federal Bureau of Investigation, acting under the authority of the Attorney General of the United States, seized said Electronic



Pointmaker on December 6, 1955. Thereafter, on the 5th day of January, 1956, James Hannifin intervened and filed his claim to said article, and thereafter, on the 12th day of January, 1956, the case was tried before this Court without a jury; Mr. Krest Cyr, United States Attorney for the District of Montana; and Mr. Frank M. Kerr, Assistant United States Attorney for the District of Montana, appearing on behalf of the libelant, and Mr. J. M. McCarvel and Mr. Edwin B. Magagna appearing on behalf of the claimant.

It appearing to the Court that said Electronic Pointmaker was, during the year 1955, knowingly transported from Chicago, Illinois, to Butte, in the State and District of Montana, and was at that [37] time and now is, a machine and mechanical device, and that there was and is, as an essential part of said Electronic Pointmaker, a drum or reel appearing on the face, with insignia thereon, consisting of numerals, and that by the operation of said Electronic Pointmaker a person may become entitled to receive, as a result of the application of an element of chance, money. The Court being fully advised in the premises,

It Is Ordered, Adjudged and Decreed that said Electronic Pointmaker, also known as the Joker Machine, Serial Number X550378, under seizure, be forfeited and condemned pursuant to the provisions of Title 15, U.S.C., Section 1177; and

It Is Further Ordered, Adjudged and Decreed that the United States Marshal for the District of

Montana shall destroy said Electronic Pointmaker above-described, now in his custody, pursuant to said Monition; and

It Is Further Ordered, Adjudged and Decreed that the libelant be awarded its costs herein expended.

Done this 6th day of April, 1956.

/s/ W. D. MURRAY,

United States District Judge.

[Endorsed]: Filed and entered April 6, 1956.

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In the United States District Court for the District  
of Montana, Butte Division

Civil No. 503

UNITED STATES OF AMERICA,

Libelant,

vs.

ONE ELECTRONIC POINTMAKER, Also  
Known as the Bingo Machine, Serial Number  
X550518,

Libelee.

JUDGMENT AND DECREE OF  
CONDEMNATION

On the 6th day of December, 1955, a Libel of Information against the above-described One Elec-

tronic Pointmaker, also known as the Bingo Machine, Serial Number X550518, was filed in this Court on behalf of the United States of America by the United States Attorney and Assistant United States Attorney for the District of Montana. The Libel of Information alleged that said Electronic Pointmaker, proceeded against, was shipped in interstate commerce from Chicago, in the State of Illinois, to Butte, in the State and District of Montana, in violation of the Transportation of Gambling Devices Act (15 U.S.C., Section 1171, et seq.). Pursuant to Monition issued by this Court, the Special Agents of the Federal Bureau of Investigation, acting under the authority of the Attorney General of the United States, seized said Electronic Pointmaker on December 6, 1955. Thereafter, on the 5th day of January, 1956, James Hanfin intervened and filed his claim to said article, and thereafter, on the 12th day of January, 1956, the case was tried before this Court without a jury, Mr. Krest Cyr, United States Attorney for the District of Montana, and Mr. Frank M. Kerr, Assistant United States Attorney for the District of Montana, appearing on behalf of the libelant, and Mr. J. M. McCarvel and Mr. Edwin B. Magagna appearing on behalf of the claimant.

It appearing to the Court that said Electronic Pointmaker was, during the year 1955, knowingly transported from Chicago, Illinois, to Butte, in the State and District of Montana, and was at that [39] time and now is, a machine and mechanical device,

and that there was and is, as an essential part of said Electronic Pointmaker, a drum or reel appearing on the face, with insignia thereon, consisting of numerals, and that by the operation of said Electronic Pointmaker a person may become entitled to receive, as a result of the application of an element of chance, money. The Court being fully advised in the premises,

It Is Ordered, Adjudged and Decreed that said Electronic Pointmaker, also known as the Bingo Machine, Serial Number X550518, under seizure, be forfeited and condemned pursuant to the provisions of Title 15, U.S.C., Section 1177; and

It Is Further Ordered, Adjudged and Decreed that the United States Marshal for the District of Montana shall destroy said Electronic Pointmaker above-described, now in his custody, pursuant to said Monition; and

It Is Further Ordered, Adjudged and Decreed that the libelant be awarded its costs herein expended.

Done this 6th day of April, 1956.

/s/ W. D. MURRAY,

United States District Judge.

[Endorsed]: Filed and entered April 6, 1956.

[Title of District Court and Cause.]

Civil No. 502

NOTICE OF APPEAL

Notice is hereby given that James Hannifin, claimant herein, hereby appeals to the United States Court of Appeals for the Ninth Circuit from that final judgment and decree of condemnation entered in this action on the 6th day of April, 1956, to wit, that judgment and decree of condemnation rendered by the Honorable W. D. Murray, United States District Judge for the District of Montana, Butte Division.

JOHN M. McCARVEL,

Attorney for Appellant and  
Claimant,

EDWIN V. MAGAGNA,

Attorney for Appellant and  
Claimant,

By /s/ JOHN M. McCARVEL.

[Endorsed]: Filed April 20, 1956. [41]

[Title of District Court and Cause.]

Civil No. 503

## NOTICE OF APPEAL

Notice is hereby given that James Hannifin, claimant herein, hereby appeals to the United States Court of Appeals for the Ninth Circuit from that final judgment and decree of condemnation entered in this action on the 6th day of April, 1956, to wit, that judgment and decree of condemnation rendered by the Honorable W. D. Murray, United States District Judge for the District of Montana, Butte Division.

JOHN M. McCARVEL,  
Attorney for Appellant and  
Claimant,

EDWIN V. MAGAGNA,  
Attorney for Appellant and  
Claimant,

By /s/ JOHN M. McCARVEL.

[Endorsed]: Filed April 20, 1956. [42]



In the District Court of the United States for the  
District of Montana, Butte Division

Civil No. 502

UNITED STATES OF AMERICA,

Libelant and Appellee,

vs.

ONE ELECTRONIC POINTMAKER, Also  
Known as the Joker Machine, Serial Number  
X550378,

Libelee and Appellant.

Civil No. 503

UNITED STATES OF AMERICA,

Libelant and Appellee,

vs.

ONE ELECTRONIC POINTMAKER, Also  
Known as the Bingo Machine, Serial Number  
X550518,

Libelee and Appellant.

### STATEMENT OF POINTS

The appellant in the above-entitled action sets forth the following points on which he intends to rely on appeal to the United States Court of Appeals for the Ninth Circuit:

The trial Court erred as follows:



1. In holding and deciding that the libelee herein is and was a "gambling device" within the meaning of Title 15, U.S.C., Section 1171.

2. Since the Transportation of Gambling Devices Act (Title 15 U.S.C., Section 1171, et seq.), commonly known as the Johnson Act, being penal in character, was not strictly construed.

3. In holding and deciding that the libelee herein had drums or reels, with insignia thereon, as an essential part of this machine.

4. In holding and deciding that by the operation of this machine, the libelee, that a person may become entitled to receive as a result of the application of an element of chance, money. [45]

5. That the libelee herein was transported in violation of Title 15, U.S.C., Section 1172.

6. In reserving a ruling on claimant's proctor's objection to the introduction of evidence tending to show the libelee machine was used for gambling purposes and then not ruling on said objection.

7. In denying claimant's motion to dismiss at the conclusion of the libelant's case.

8. In not finding that the libelee herein is not a gambling device per se.

9. In not finding that there was no "direct pay-off" from the machines, the libelee herein.

10. In not finding that the machine, the libelee herein, can be used for amusement and recreational purposes.

11. In not finding that no coin can be inserted in the machine, libelee herein, to operate the machine.

12. In not finding that the counter device, or totalizer, was not an essential part of the machine, libelee herein, in the intent of Congress in passing the "Johnson Act," and have nothing to do with the operation of the machine but merely record the score.

13. In not dismissing the amended libel of information as not being within the prohibitive scope of the Johnson Act.

14. In not dismissing the libelant with costs.

/s/ JOHN M. McCARVEL,  
Proctor for Claimant and  
Appellant;

EDWIN V. MAGAGNA,  
Proctor for Claimant and  
Appellant.

[Endorsed]: Filed April 20, 1956. [46]

In the United States District Court, District of  
Montana, Butte Division

Civil No. 502

UNITED STATES OF AMERICA,

Libelant,

vs.

ONE ELECTRONIC POINTMAKER, Also  
Known as the Joker Machine, Serial Number  
X550378,

Libelee.

Civil No. 503

UNITED STATES OF AMERICA,

Libelant,

vs.

ONE ELECTRONIC POINTMAKER, Also  
Known as the Bingo Machine, Serial Number  
X550518,

Libelee.

### TRANSCRIPT OF EVIDENCE

The above causes were consolidated and came on for trial before the Hon. W. D. Murray, United States District Judge for the District of Montana, sitting without a jury, at Butte, Montana, on January 12, 1956. The Libelant was represented by its counsel, Mr. Krest Cyr, United States Attorney for the District of Montana, Butte, Montana, and Mr. Frank M. Kerr, Assistant United States Attorney for the District of Montana, Butte, Montana; and

James J. Hannifin, claimant of the above-named Libelees was represented by his counsel, Mr. John M. McCarvel, Great Falls, Montana, and Mr. Edwin V. Magagna, Rock Springs, Wyoming.

Thereupon, the following proceedings were had:

The Court: Numbers 502 and 503, these matters can be heard at one time?

Mr. Cyr: Yes, your Honor, I have talked with Mr. McCarvel, appearing on behalf of Jim Hannifin, one of the claimants, and he has agreed that both actions may be tried at the same time.

The Court: Very well, proceed.

Mr. McCarvel: May it please the Court, at this time I would like to ask the Court and make a motion to the effect that the name of Edwin V. Magagna, of the law firm of Magagna, Galicich and Hamm, of Rock Springs, Wyoming, be entered as counsel in this case. I will tell the Court, Mr. Magagna is presently admitted to the District Court of the District of Wyoming, and, by the way, is President of the Wyoming State Bar Association.

The Court: Very well, for the purposes of this action, Mr. Magagna's name may be entered as of counsel.

Mr. Magagna: Thank you, sir.

Mr. Cyr: Ready to proceed, your Honor?

The Court: Yes. [2\*]

Mr. Cyr: I might state to the Court before starting so the issues are defined, this is a civil action brought against these machines for the pur-

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\*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

pose of having them declared gambling devices and destroyed under 1171 and the following sections. The pleadings in the case are such that it is admitted they were transported in interstate commerce; the claimant, Jim Hannifin claims ownership of the machines. However, the answer and claim of the owner, which has been filed, puts in issue two things, one, that it is within the purview of the statute, which provides a prohibition against the interstate transportation of any so-called slot machine, or any other mechanical device, an essential part of which is a drum or reel with insignia on. They deny this is such a machine; also, that part of the statute which says, "which may deliver, as the result of the application of any element of chance any money or property." They have denied this is a machine which will be or was used under those circumstances, so, as we see it, those are the two issues in these cases, the other matters having been admitted, and we have no proof as to interstate transportation at this time.

The Court: Is that as you understand it?

Mr. McCarvel: That is substantially correct, your Honor.

The Court: Very well, proceed.

Mr. Cyr: I would like to know so I do not be surprised, he says "substantially". [3]

Mr. McCarvel: We don't deny these machines have been transported interstate.

The Court: Very well, proceed.



KENT HUTCHESON

called as a witness on behalf of Libelant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Cyr:

Q. Will you state your name, please?

A. My name is Kent Hutcheson.

Q. Your occupation and residence, please?

A. I am a Special Agent with the Federal Bureau of Investigation. I reside at 518 West Park in Butte, Montana.

(Inaudible discussion between counsel.)

Mr. McCarvel: Your Honor, I am just asking that the machine and the remote control unit be separately identified as exhibits so the record will adequately show which we are talking about.

The Court: They will have to be, I suppose.

Mr. Cyr: Your Honor, we don't know whether they are separate parts or not. We picked them up as one, they are attached as they were. They can take them apart, there are thousands of parts in this.

The Court: I don't understand you. I thought you said you wanted the two machines themselves identified separately. [4]

Mr. Magagna: As the witnesses go on, part of the time they will be testifying about this phase, and part of the time, that phase. Unless you have them identified in the record, you don't know which they are talking about. We had that happen in a

(Testimony of Kent Hutcheson.)

case in Wyoming. At least, if your are going to mark this (indicating) Exhibit 1, mark the other part Exhibit 1-A, so we can tell what they are discussing.

The Court: Yes.

Mr. Cyr: The remote control device only?

The Court: Yes.

Mr. Magagna: Yes.

Q. These machines which have been marked Plaintiff's Exhibit 1, Plaintiff's Exhibit 1-A and Plaintiff's Exhibit 2 and Plaintiff's Exhibit 2-A, have you seen those machines before?

A. Yes.

Q. And were you the agent who took them into your possession? A. I was.

Q. When and where was that?

A. That was on December 6, 1955, in the afternoon. I seized those machines at the Eagle Lounge, at 26 West Granite.

Q. Had you, prior to that time, seen any of these machines in Butte? A. I have.

Q. When was the first time you saw machines of this kind? A. June 30th, 1955. [5]

Q. Where was that?

A. In Butte, Montana.

Q. Where, specifically, in Butte?

A. I saw five machines at Lloyd's on South Montana; I saw one machine in the Rose Garden on South Montana; I saw one machine at the It Club in Rocker; and one machine at the Leaky Roof Tavern at the Nistler Junction.



(Testimony of Kent Hutcheson.)

Q. Do you know whether or not——

A. Excuse me, sir, I forgot two machines. I saw two other machines in the possession of Iva Kincaid.

Q. Were those machines in a public establishment?

A. She had them in her personal possession at Unit 5 in Eddy's Motel on South Montana.

Q. They were not in a bar?

A. They were not in operation.

Q. All the others were in bars?

A. Yes, sir, the others were located in bars or places of business.

Q. Were all these machines other than—strike that. Do you know who owned all these machines with the exception of the Kincaid machines?

A. Well, James Hannifin told me he and his two brothers, Danny and Phil, had paid the freight on these machines from the Buckley Manufacturing Company in Chicago, and led me to believe the machines were actually in his custody in Butte, [6] Montana.

Q. Do you know whether or not all those machines which were in these public places and on which Hannifin paid the freight were used as gambling devices?

Mr. McCarvel: To which we object, your Honor, on the ground and for the reason it calls for a conclusion of the witness in reference to these machines, that it has no probative value, that it is

(Testimony of Kent Hutcheson.)

entirely irrelevant, incompetent and immaterial in reference to the hearing in this case.

Mr. Cyr: Your Honor, I have asked him if he knew. The only answer to that is yes or no, he does or does not know.

The Court: He can tell us what he knows. The objection is sustained to the question itself.

Q. Did you have any conversation with Mr. Hannifin on the 30th of June with reference to all of these machines? A. I did.

Q. Where was that conversation held?

A. It was in a Chevrolet carryall truck located right outside of his home, the south side of his home located at 15 South Excelsior here in Butte.

Q. Who else was present?

A. No one except Mr. Hannifin and I.

Q. What else was said, with reference to these machines being gambling devices or anything?

A. Mr. Hannifin stated to me that all the machines, except [7] two located in the Elks' Club, which I never saw, all the machines except those located in the Elks' Club were being used as gambling devices.

Q. Now, when you seized these machines at the Eagles' Lounge, can you describe the interior of the Eagles' Lounge and where the machines were located?

A. The Eagles' Lounge is on the south side of Granite Avenue West, 26 West Granite here in Butte. As you enter the door, there is an office just immediately to the right where Mr. Irving Coombs,

(Testimony of Kent Hutcheson.)

who is Secretary of the Eagles' Lounge has his office; on the right farther down from this office is a bar that I would say was approximately 25 feet long. To the left of the door as you enter, there is a partition-like arrangement which, when you walk back almost to the end of the bar, you can turn and look to your left, and there is a slightly enclosed room—I don't recall it had a door, I don't believe it did—inside of what would look like a coat closet. These two machines were located there. The two remote control boxes, Exhibit 1-A and 2-A were located behind the bar, and Exhibit 2-A and 1-A were connected with Exhibit 2 and Exhibit 1 by those cables that you see running under the floor through the basement.

Q. And were connected to the machines?

A. And were connected to the machines. They were operable at the time I first saw them. [8]

Q. Were the faces of the machines lighted at that time? A. Yes, sir.

Q. Was anybody in the bar playing the machines?

A. No one was playing them at the time I seized them.

Q. Anybody playing them prior to that time?

A. Mr. Al Laforest, who is, I believe, bartender at the Eagles' Lounge in the evening, played the machines on the first occasion I was in there that afternoon.

Q. Before the seizure took place?

A. Before the seizure took place. I say he

(Testimony of Kent Hutcheson.)

played those machines. He played the Joker machine, he did not play the Bingo machine.

Q. By the Joker Machine, you refer to?

A. Exhibit 1.

Q. Exhibit 2 is described as what?

A. As the Bingo machine.

Q. I don't know whether it is specific in the record. Exhibit 1-A is the remote control device connected with Exhibit 1, is that correct?

A. Correct.

Q. Exhibit 2-A is the remote control device and black box which was connected to Exhibit 2?

A. As you will note, there is an exhibit on the top of 2-A which says in red letters on a white card "Bingo", indicating it is connected to the Bingo device. [9]

Mr. Cyr: We will offer in evidence Plaintiff's Exhibits 1, 1-A, Plaintiff's Exhibit 2 and Plaintiff's Exhibit 2-A.

Mr. McCarvel: To which we object, your Honor, upon the ground and for the reason a proper foundation hasn't been laid for their introduction.

The Court: In what manner is the foundation lacking?

Mr. McCarvel: That it hasn't been adequately described where the Eagles' Lounge is located; on the ground and for the reason further that this witness hasn't been properly qualified; on the ground and for the reason that the exact location of the machines has not been established; it has not been

(Testimony of Kent Hutcheson.)

established as to the time of day at which the machines were seized.

The Court: In what way hasn't he been qualified? Make your objection specific.

Mr. McCarvel: All he has testified——

The Court: Qualified as to what?

Mr. McCarvel: Pardon.

The Court: You make the objection that the witness is not qualified. Qualified as to what?

Mr. McCarvel: As to his capacity as Special Agent for the FBI.

The Court: The objections are overruled. They are admitted.

(Plaintiff's Exhibits 1 and 1-A, being respectively the Joker device and the remote control box connected thereto, and Plaintiff's Exhibits 2 and 2-A, [10] being, respectively, the Bingo device and the remote control box connected thereto, were here received in evidence over objection, and the same are in the possession of the Clerk of this Court.)

Q. At the time you seized these machines, did you observe any numbers on them purporting to be serial numbers or anything of that kind?

A. Yes, I identified the machines by number and where they were located. The Joker device there has Number X550378 stamped on the wood base at the rear.

Q. That is Plaintiff's Exhibit 1?

A. That is Plaintiff's Exhibit 1.



(Testimony of Kent Hutcheson.)

Q. Now, Plaintiff's Exhibit 2?

A. That is the Bingo device, and on the rear stamped into the wood of that is number X550518. There are no serial numbers—no serial numbers were extracted from Exhibit 2-A and Exhibit 1-A.

Q. Yes. I recall that you stated the location of the Eagle Lounge. Will you tell us now where the Eagle Lounge is?

The Court: 26 West Granite, he said.

Mr. Cyr: I wasn't sure, your Honor. All right, you may examine.

### Cross-Examination

By Mr. McCarvel:

Q. Who ordered you to seize these [11] machines?

A. The United States Attorney caused a libel of information to be issued. A monition was issued me directing Special Agents of the Federal Bureau of Investigation to seize these two devices, Exhibits 1 and 1-A and Exhibits 2 and 2-A.

Q. How long have you been in this area?

A. I have been in this area since December 29, 1955, excuse me, pardon, December 29, 1954.

Mr. McCarvel: That is all.

The Court: Call the next witness.

(Witness excused.)

HUBERT J. MASSMAN

called as a witness on behalf of Libelant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Cyr:

Q. Would you state your name, residence and occupation, please?

A. Hubert J. Massman, 902 North Rodney, Helena, Montana, Assistant Attorney General, State of Montana.

Q. How long have you occupied the position of Assistant Attorney General of the State of Montana? A. Approximately three years.

Q. That has been continuous?

A. Yes. [12]

Q. I call your attention to what has been marked as Plaintiff's Exhibits 1, 1-A, Plaintiff's Exhibit 2 and Plaintiff's Exhibit 2-A. Have you had occasion to see machines of that same kind in Butte, Montana, within the past six months? A. I have.

Q. Where did you see them?

A. I saw machines of that type at the Leaky Roof Tavern, the Highway Inn, the It Club, those three establishments are west of Butte on U. S. Highway 10; at Lloyd's of Butte——

Mr. Magagna: I don't want to be objectionable, but I believe the machines in issue are these two machines. I can't follow this line of testimony, the wandering around talking about the whole State of Montana. I object to the testimony unless he identifies these machines, or unless he says he saw similar



(Testimony of Hubert J. Massman.)

machines, but I don't follow the trend of this testimony.

The Court: What is the purpose?

Mr. Cyr: It is offered to prove a search was made in the City of Butte on these machines. Every one in operation was viewed by this witness and either played by him or a fellow accompanying him in his presence; that he paid a consideration for an opportunity to play them; he was paid off over the bar with money after playing them.

The Court: That is some place else. [13]

Mr. Cyr: Except, your Honor, they have stated that these machines, they specifically deny "by the operation of the aforesaid Electronic Pointmaker a person or any person may become entitled to receive as the result of the application of an element of chance or in any other manner, money or property." We will show this as general proof as to this type machine, not specifically these machines, but it is the machine itself which is here being libeled. Other machines of the same kind, used for the same purpose uniformly and generally, we submit, is evidence of the character and nature and purpose for which these machines are used.

Mr. Magagna: If the Court please, this gentleman gets up and testifies he has been all over the State of Montana and there has been gambling in the State of Montana. Following it from that point, I don't think he has connected it with these machines aside from the general proposition of saying there had been found similar machines. When he

(Testimony of Hubert J. Massman.)

gets on and starts listing them, I don't see they have anything to do with these machines. It would have to be testimony about these machines. Theoretically, you could prove there were 400 other machines. If you proved the 400 and used for a specific purpose and failed to prove these two were, your libel would fail, so I can't follow your proof on this having any advantage whatever in this case.

Mr. Cyr: Your Honor, I don't agree with that. If the [14] device is a mechanical device within the purview of the statute, whether or not it was used for that purpose, it is within the statute.

Mr. McCarvel: Why is testimony available at all? The fact it is used or not doesn't bring it in or out of the purview of the statute. That is our argument, so testimony as to other machines used for that purpose is not material. You, from your own statement, have admitted that if it comes within the purview of the statute, that is what our issue is, not whether it was used for gambling or not.

Mr. Cyr: Your Honor, our position is it looks like a duck, it sounds like a duck, flies like a duck, quacks like a duck, it is a duck. We will show the other machines observed are gambling devices. We will show later these two machines were similarly used.

The Court: Objection overruled.

Q. Continue, please.

A. I observed machines at Lloyd's of Butte, the Vegas Club in Meaderville, and at the Red Rooster Club on Harrison Avenue here in Butte.

(Testimony of Hubert J. Massman.)

Q. Now, were the machines in each of those places the same as either Exhibit 1 or Exhibit 2?

A. Yes, in every respect, they were one or the other kind.

Mr. Magagna: I presume without having to jump up continually to object we can have it understood our objection [15] goes to this entire line of questioning?

The Court: Yes.

Q. Who was with you at that time?

A. Emmett T. Walsh.

Q. What is his profession or occupation?

A. He is also an Assistant Attorney General of the State of Montana.

Q. And when was this, when did you visit these places?

A. On the nights of August 5th and 6th, 1955, and on the nights of August 12 and 13th, 1955.

Q. Now, at each of these places, would you state what you did with relation to these machines, either you or Emmett Walsh in your presence?

A. In each establishment, we found the machine located some distance from the cash register at the bar, the machine which we will designate as Exhibit 1 or 2; and the remote control boxes you find as 1-A or 2-A would be very close to the cash register behind the bar. I would go up to the bartender and put some money on the counter, and the bartender would pick up the money, and he would tell us which machine we were to play——

Mr. McCarvel: Just a minute, now, I would like

(Testimony of Hubert J. Massman.)

to make an objection for the record at this time that this charge is laid under Title 15 of the United States Codes, Section 1171, and it is charged herein that these are gambling devices, and [16] that they were transported in interstate commerce. Now, we object to any testimony with reference to how these machines were used in reference to gambling, because our position is that they are not gambling devices as such. The fact they were used for gambling doesn't in any way tend to prove they are, it has no probative value at all that the machine itself is a gambling device. A deck of cards could be used as a gambling device, a flip of a coin could be a gambling device. We object to any testimony in reference to any evidence as to how this particular machine was used as a gambling device. The Government has to prove here that this machine itself is a gambling device, and not how it was used.

The Court: I take it what the Government is attempting to show is the use to which this machine can be put because another one similar to it has been used in a particular manner. I will reserve ruling on your objection, because it no doubt is going to involve some briefing with reference to the matter, and I don't know the answer at this point. In any event, I will reserve ruling on your objection, and you can proceed with the evidence.

Q. Would you proceed?

A. The bartender would take the money we gave him, and, as an example, if we were playing a machine at a nickel a play and we gave him a



(Testimony of Hubert J. Massman.)

dollar, he would take the dollar and push the button on what is defined as Exhibit 1-A or 2-A, [17] depending upon which machine was in use. When he would press the button, there would be a clicking sound, and those reels which appear somewhat like a speedometer would click up to the position where they would read "20." We would then go over to Exhibit 1 or 2, and the same reels on the machines would read "20." The next step would be to press the yellow button up at the upper left-hand—right-hand, as you are facing from the machine—corner of the machine, and when that button was pressed——

Q. You are referring now to Plaintiff's Exhibit 1 or 2, the machine itself?

A. Yes. Upon pressing that button, you could then pull the lever on the machine. When the lever was pulled, there would be a whirling, clicking sound, and lights would flicker on the various numbers or fruit or pictures on the face of the machine, and it would finally come to rest. As an example, with Exhibit 1, the Joker machine, we will assume that in the first column, a cherry remained lighted, and in the second column a cherry remained lighted, and in the third column some other fruit. If you will observe the face of the machine, stamped in the metal on the face, it has two cherries and a few dots, then "5," the numeral "5."

Q. You are referring to Plaintiff's Exhibit 1 now?

A. Yes, and when it stopped with those two cherries lighted, the speedometer reel device would

(Testimony of Hubert J. Massman.)

then click. Upon pulling [18] the handle, it would have dropped from "20" to "19." When it come to rest on two cherries, you would have five clicks, and it would come up to read "24."

Q. You are referring to the three white reels on the face of the machine behind the glass panel toward the middle part of the machine?

A. Yes, it would then read "24." If you didn't have a winning combination, that same panel would just show "19."

Q. It would show one less as the result of pulling the handle?

A. It would show one less as the result of pulling the handle. That play would then be completed, and you could commence a second play by pressing the yellow button in the upper left-hand corner and pulling the handle. I observed other people playing the machine in that manner, and I played it in that manner in every establishment; and in every instance with either machine, upon concluding play, I arranged to have something left showing on the reels that we have mentioned before.

Q. On the face of the machine?

A. On the face of the machine, and in each instance the bartender would pay for those numerals in the same amount I had paid to play the machine in the beginning.

Q. Was that true whether the amount exceeded—I believe you said you played 20. If the number of games on the face of [19] the machine exceeded 20,

(Testimony of Hubert J. Massman.)

would he pay you the number on the face of the machine?

A. Yes. As an example, where the machine, on the first play I won five plays, and it read "24," he would pay off \$1.20.

Q. That was true in all instances?

A. That was true of every machine and in every establishment we visited.

Q. Did you observe whether or not there was a connection between the reels and drums which appear on the face of the remote control devices which are marked Plaintiff's Exhibit 1-A and Plaintiff's Exhibit 2-A, and the reels which appear on the face of the slot machines?

A. Yes, in every instance, you could see a cable running between, and in every instance when he pressed the button of the remote control device, changing the reading on the cylinders on that device, a corresponding change was made on Exhibits 1 and 2.

Q. That is, the tally on each of those, 1-A and 1, would correspond at all times?

A. Yes, they were synchronized.

Q. I believe you stated 1-A and 2-A were always located behind the bar? A. Yes.

Q. And accessible to and under the control of the bartender [20] of the establishment?

A. Yes.

Q. Did you at that time go to the Eagles' Lounge? A. No.

Mr. Cyr: You may examine.



(Testimony of Hubert J. Massman.)

Cross-Examination

By Mr. McCarvel:

Q. Mr. Massman, at the time you made your investigation with Emmett Walsh, you were in the employ of and acting for the Attorney General of the State of Montana, is that right? A. Yes.

Q. And you went there at his instance and request, is that right? A. Yes.

Mr. McCarvel: That is all.

Redirect Examination

By Mr. Cyr:

Q. In that connection, did you seize some of the machines of the same kind? A. Yes.

Q. Where was that?

A. Lloyd's of Butte, we seized four machines of this type machine. [21]

Q. What was done with those machines?

A. They were destroyed publicly by order of District Judge McClernan.

Q. In Butte?

A. In Butte, Montana. I don't just know the date, I could look it up.

Mr. Cyr: We would ask the Court to take judicial notice of the decision of Judge McClernan in that case. Do you have it with you?

The Court: I don't take judicial notice of it; I think this is immaterial.

(Testimony of Hubert J. Massman.)

Mr. Cyr: I ask the Court to take judicial notice——

The Court: I think the whole thing is immaterial that he seized four machines and investigated them and Judge McClernan ordered them destroyed. I don't take judicial notice of it, and that is all immaterial to this matter, in any event.

Mr. Cyr: That is all.

(Witness excused.)

### OLE NELSON

called as a witness on behalf of Libelant, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Cyr:

Q. Would you state your name, please, sir? [22]

A. Ole Nelson.

Q. Where do you live, Mr. Nelson?

A. 22 North Idaho.

Q. Where are you employed?

A. I am not employed right now.

Q. Referring to the 6th of December, 1955, where were you employed?

A. Tending bar at the Eagles' Lounge.

Q. Eagles' Lounge in Butte? A. Yes, sir.

Q. That is at 26 West Granite?

A. Yes, sir.

Q. Were you present at the time these machines were in the Eagles' Lounge? A. I was.

(Testimony of Ole Nelson.)

Q. And during the time you were tending bar, did any patrons of the Eagles' Lounge play these machines? A. No, sir, not at that time, no.

Q. Well, at any time?

A. Well, our machines used to play a little every once in awhile, but we had very little play on them.

Q. During the time you were acting as bartender at the Eagles' Lounge, were the machines ever played by any patrons?

A. Yes, they were, by Eagles.

Q. Did they pay you some money to play these machines while [23] you were bartender?

A. They would pay me and play it just a little while, and a few times they would pay off and they got money back, what they put in.

Q. If the number of games exceeded the amount they had paid, you would pay them that amount, would you not?

A. They would generally play them over again. They would get off.

Mr. McCarvel: Without interrupting too much, we ask that the objection we made in reference to any gambling that this machine was used for go to all of the questions asked in that connection, the fact that the machine was used as a gambling device.

The Court: Yes, you made that objection some time ago. I have reserved ruling on that, and I will consider it when you file a brief with the Court, but the Court will receive evidence in the meantime, under the reserved ruling, that the machine was actually used as a gambling machine.

(Testimony of Ole Nelson.)

Mr. McCarvel: We didn't want to have to jump up each time.

The Court: You don't have to, and I will give you an opportunity to advise me with reference to the point.

Q. How much did it cost, Mr. Nelson, for each play on this machine? A. Five cents. [24]

Q. And assume for a moment——

The Court: On this machine—which machine?

Q. On this machine, Exhibit 1. If I wished to play this and you were the man tending bar at the time, and I would give you \$1.00, how would you give me the right to play that machine?

A. Well, we would push the light on Exhibit 2-A. I guess.

Q. You are referring to these black boxes marked 1-A and 2-A? A. Yes, sir.

Q. You would push the button on the right, is that correct? A. Yes, sir.

Q. Which says "Start"? A. Yes.

Q. Would you push it until it registered 20 games? A. Yes, sir.

The Court: Or 21.

Q. 21, I am not skilled in this, your Honor, and then would that entitle the man to pull the handle 21 times, is that correct? A. Yes, sir.

Q. Then, when he had finished playing, you would pay him a nickel for each one of these that would appear on the face of Exhibit 1-A or 2-A?

A. If he had any coming, yes; most of the time he wouldn't. [25]

(Testimony of Ole Nelson.)

Q. Most of the time he lost?

A. Most of the time he played what he had coming.

The Court: Let me just ask a question about the operation of this. After a particular patron finishes play and the figures "21" appear, then how do you clear the machine for the next patron to play?

A. If there is any on it, why you just push the next button.

The Court: What is that?

A. If there is anything on it, you would push the next button.

The Court: The one on the left of Exhibit 1-A?

A. That clears it.

The Court: That clears it.

(U. S. Attorney demonstrates on machine Exhibit 1-A.)

The Court: I see.

Mr. Cyr: You may examine.

Mr. McCarvel: No questions.

(Witness excused.)

## GLEN TARBOX

called as a witness on behalf of Libelant, being first duly sworn, testified as follows:

### Direct Examination

By Mr. Cyr: [26]

Q. State your name, please.

A. Glen Tarbox.



(Testimony of Glen Tarbox.)

Q. Where do you reside, Mr. Tarbox?

A. 102 East Central, Missoula, Montana.

Q. How long have you resided in Missoula?

A. The last time since 1937.

Q. What is your occupation presently in Missoula, Montana?

A. I am part owner of a radio and television repair shop.

Q. Prior to entering into that occupation, what was your occupation?

A. I was one of the owners of an automatic phonograph company.

Q. How long were you engaged in that business?

A. From 1937 to 1951, I believe, not including a time during the war. I wasn't there during the war.

Q. During that time did you have occasion to become acquainted with the working mechanisms of slot machines and pin ball machines?

A. I did.

Q. Did you, as part of your occupation, during that period of time, repair and take care of the maintenance and operation of those machines?

A. I did.

Q. How many years would you say you spent in that business?

A. In the coin machine business as a whole? [27]

Q. Yes.

A. It would be 1937 to 1952, with about two years out; it would be about 13 years, I believe.

Q. Just for the information of the Court, what



(Testimony of Glen Tarbox.)

is the workings of a pin ball machine, how does it operate, is it electrical?      A. Yes, strictly.

Q. What type system does it have in it?

Mr. Magagna: I wish to object to any testimony with respect to pin ball machines. I can't follow the relevancy of pin ball machines in this case.

The Court: Just to show he is qualified with electrically operated machines.

Mr. Magagna: That is fine. I presume he knows how the electric phonograph works. Are you going to have him testify as to the inside workings of a phonograph?

The Court: Just generally, that he has had experience with electrical——

Mr. Cyr: Yes.

Mr. Magagna: I didn't object until you started testifying as to the inside workings of a pin ball machine.

Mr. Cyr: In that regard, he would testify it is an electrical relay system, which is the same system that is here used.

The Court: You may proceed. [28]

Q. Is that right?      A. Yes.

Q. Did you, during the same time, have occasion to repair slot machines which were mechanically operated?      A. Yes, sir.

Q. For the benefit of the Court, would you remove from Plaintiff's Exhibit 1 the working mechanism of that machine?

(Witness does as requested.)

(Testimony of Glen Tarbox.)

Q. Now, you have removed from the machine the metal portion on a base plate on which appears the words "Electronic Pointmaker"; is that right?

A. Yes.

Q. That portion which you have removed, can that be operated mechanically, can you make the reels on that spin? A. Yes.

Q. Would you illustrate to the Court how that is done? Do you want a handkerchief?

(Witness operates machine portion which he has removed.)

Q. Now, does that portion of the machine operate substantially in the same manner as the slot machines operated?

A. The mechanical part; yes.

Q. Now, what remains in the hull of the machine which has been marked as Plaintiff's Exhibit 1? A. Any specified part? [29]

Q. In the operation of the machine as a complete unit, what is there remaining in the machine?

A. Well, there is a push button, to start with.

Q. What is the purpose of the push button?

A. To start the relays so you can pull the handle.

Q. You refer to the yellow button which appears at the top of the machine? A. Yes.

Q. What else is there?

A. There is wires and connectors which connects the motor, plugs, relays.

Q. What do those wires operate? You are re-

(Testimony of Glen Tarbox.)

ferring to the portions on the back of the glass portion with the emblems on it?

A. Most of it would be to turn off and on the light globes behind the counter.

Q. With reference to the drums and reels which appear with numbers at the bottom, are those electrically operated also?      A. Yes.

Q. With those three things—the machine is mechanical except for those three things; is that correct, in its operation?

A. No—including this as one; yes.

Q. What?

A. Including this section as one (indicating).

Q. That is, the electrical portion of the machine operates [30] the three things which you have described; is that correct?      A. Correct.

Q. Are those things essential to the operation of this machine as a complete unit?

A. With this particular machine; yes.

Q. Just for the record, can you explain the relationship between this mechanical unit which has been removed from the hull of Plaintiff's Exhibit 1, how it operates with reference to the lights on here and the drums or reels which appear at the bottom? What happens when the handle is pulled?

A. Well, you drop a coin which releases the handle——

Q. You said you drop a coin?

A. I beg your pardon. You push the button, which allows you to pull the handle, which disen-

(Testimony of Glen Tarbox.)

gages your drive arm and allows your reels to spin——

Q. In that connection, what controls the time of spinning of these wheels?

A. There is what they call a clock. Every time you pull the handle, it is wound up, as you call it, and when it runs down in a certain period, it locks the wheel.

Q. During that interim, are these wheels free wheeling?      A. Yes.

Q. Nothing other than friction to control the speed at which they turn?      A. Yes. [31]

Q. The clock which you refer to, you say it is wound up, is that controlled by a spring?

A. Yes.

Q. And that spring has uniform tension no matter how you pull the handle; is that correct?

A. Approximately; yes.

Q. After you have pulled the handle, then what happens?

A. The wheels spin until they are stopped by the clock, and they are locked by some arms which align these in certain positions.

Q. You are referring to the discs which appear on there?

A. Yes; and on the discs are certain electrical points which light up your symbols on your machine.

Q. On the face of the machine?

A. Yes. If the right combination is gotten, it records.

(Testimony of Glen Tarbox.)

Q. Where does that record?

A. On the meter.

Q. That is the reels or drums which appear on the bottom of the face of the machine?

A. These (indicating).

Q. So that is connected with the operation of the machine, the lights on the face of the machine, and the operation of the mechanical portion of the machine?

A. Yes.

Q. The counting device? [32]

A. Yes, sir.

Q. With reference to what has been marked Plaintiff's Exhibit 1-A, can you state to the Court—strike that. In the event that no game is won, does it still, the pulling of the handle and the operation of the mechanical device, does it still affect the movement of the drums and reels which appear on the face of the machine showing the number of games?

A. If there was numbers on it; yes.

Q. It would decrease it by one if there was no win is that right?

A. Right.

Q. The black boxes which have been marked Exhibits 1-A and 2-A, will you state to the Court what connection there is between those and this machine?

A. They are a recording mechanism to more or less correspond with this one here (indicating).

Q. You are referring to Plaintiff's Exhibit 1?

A. Yes.

Q. Or Exhibit 2?

A. Yes.

Q. Is that also the source of the electrical power



(Testimony of Glen Tarbox.)

for the operation of this machine? A. Yes.

Q. In other words, the machine cannot be operated except by the use of these black boxes, 1-A or 2-A; is that correct? [33]

A. If it is operated right; yes.

Q. Whoever operates this portion of it would have to, through some method, start the control by tallying some games on there, which would register on the machine?

A. If there weren't any on it; yes.

Q. Is there any other controlling device on this other than the handle controlling the speed of these reels which appear inside the machine and make electrical contact controlling the lighting of the insignia on front of the machine?

A. Say that again, please?

Q. Is there any thing other than the handle which controls the speed of the operation of these? (Indicating.) A. Yes.

Q. What?

A. There is a spring and what they call a kicker.

Q. Are both of those spring controlled?

A. Well, the spring naturally is the control factor on the kicker; yes.

Q. On the kicker; and also on the clock?

A. There is two different springs.

Q. Would you explain to the Court which of the springs controls the kicker on this?

A. It is on the mechanism; you pull it down.



(Testimony of Glen Tarbox.)

Q. It is the spring which is attached to the arm on the side. Which spring is it now? [34]

A. It is underneath here (indicating). It hits these notches and kicks it.

Q. It is the elongated spring inside the machine immediately under the three reels which are notched on the extreme right of the mechanical part?

A. Yes.

Q. When you push that—would you explain to the Court how that releases the kicker when you pull the handle?

A. You pull the handle down, and it allows it to ride over an arm, and when this arm goes over the top of the arm, it allows it to kick, and——

Q. That kick is the result of the spring being contracted, which is stretched by the pulling of the handle? A. Right.

Q. And the same is true of the timer, which is also extended by pulling the handle?

A. Right.

Q. That is the mechanism that operates the reels of the machine; is that true? A. Right.

Mr. Cyr: You may examine.

### Cross-Examination

By Mr. Magagna:

Q. Now, as I understand, you have testified you have done [35] considerable work on slot machines for repair purposes? A. Yes.

Q. You were explaining some of the similarities

(Testimony of Glen Tarbox.)

between the two. Explain to the Court what the differences are between this unit as assembled and the slot machines you have worked on? What would you say were the principal differences?

A. The wheels are on your mechanism on the right, there is no drums on it, there is no numbers on it—you mean the difference between this and a slot machine? You want me to go into a slot machine?

Q. Are there any main differences?

A. For one thing, a slot machine——

Q. Isn't one thing a slot machine had a slot for a coin?

A. Right, and a coin-pay-out, and was mechanically operated. This one is partly mechanical and partly electrical.

Q. In that connection, with the slot machines you have worked on, did any of them have a counter device similar to this one? A. No.

Q. That counter device has not been used in slot machines? A. I have never seen one.

Q. Now, with reference to these plates here that turn around, are there any markings or insignia on those? A. I didn't see any.

Q. Now, what markings or insignia were there on the reels [36] or drums used in the slot machines?

A. You mean on the face of the drums, you mean?

Q. On the reels and drums of the slot machines, what insignia did you find on that type machine?

(Testimony of Glen Tarbox.)

A. They varied, they had fruit symbols and bells.

Q. With reference to the reels or drums you saw in slot machines that had insignia thereon, are there any of that type of reels or drums in this assembly?

A. The large drums in the slot machine? No, there are not.

Q. Now, you went on to point out that this counter device was an essential part to play this machine. Now, you demonstrated here, you worked this device mechanically without any connection with the counter device. You, as an expert, would be able to operate the machine with the counter disconnected?

A. The question was asked me as it was, complete.

Q. I am not asking you to go back to the question. Could you make this operate without the counter device being tied into this thing?

A. Are you talking about Exhibit 1 and 1-A together, are you talking about this unit?

Q. Let me take it this way: Can you wire this (indicating), so the counter does not operate, using the counter in this machine here (indicating)?

A. Yes. [37]

Q. Could you make this (indicating) operate without the counter working in this machine (indicating)?

A. Yes.

Q. Could you make it work without this coun-

(Testimony of Glen Tarbox.)

ter (indicating) working on this machine (indicating)?

A. You mean the wheels spin and operate?

Q. Yes. A. That's right, you can.

Q. Isn't it a fact, when all this does—when you say this is an essential part, all it does is keep track of the play and is a connecting switch for current to go through? A. Essentially, yes.

Q. In other words, you could bypass this (indicating) if you could turn the current into here (indicating) with a direct switch, and not have to have this (indicating) at all? A. Right.

Q. Again going back to the counting device, have you ever seen a counting device on any other machine other than machines of this type in your business as a repair man? A. That type?

Q. A counter of that type or similar?

A. Well, you see it—I won't say it is common to this type business. They use it in a lot of different types of business.

Q. Use it in a lot of different types of business? [38] A. Yes.

Q. Getting down to examples, is that used on the shuffleboard, so-called shuffleboards to keep track of plays? I am speaking of the coin-operated shuffleboards?

A. I couldn't say definitely, I have never seen one.

Q. It is used on pinball machines, counters of that type? A. Similar, yes.

Q. Actually, what does the counter do, insofar

(Testimony of Glen Tarbox.)

as the machine is concerned, what does it purport to do, or what does it actually, physically do?

A. It gives the person playing the machine a record of how many free plays he has.

Q. It is a recorder or counter?

A. Right.

Q. That counter doesn't determine how many free plays he gets or what his score is, it merely counts how many times it has been played, and then records if the device gives him back some plays, and records how many it gives back?

A. Right.

Q. Now, again going to this particular counter, have you had occasion to repair any parking meters?      A. No.

Q. Have you had any occasion in your work to repair any electrical counting devices?

A. Yes. [39]

Q. In what other machines—you said this was used in other items—in what other machines are counting devices used, electrical?

A. I have worked them on pinball machines; I have worked, not that type counting device, but similar ones, in electric phonographs; I worked on them during the war in electronic devices.

Q. That is what I am getting at, there are some phonographs that have the same—I shouldn't say the same, because each manufacturer manufactures them differently?      A. That's right.

Q. But they are on phonographs to determine how many times the phonograph has been played?



(Testimony of Glen Tarbox.)

A. Right.

Q. You were making some description with reference to the springs and the control, is there any way—withdraw that. Can a more skillful player get a different score than a less skillful player on this machine, to your knowledge, anything of skill connected with the handling of it?

A. That is a matter of opinion.

Q. You have heard of the so-called rhythm play that is supposed to be able to? A. I have.

The Court: Can the reels in this machine be adjusted so as to control the number of games that will be reflected in the [40] counter?

A. You mean percentage-wise?

The Court: Yes.

A. That can't be controlled, no, that is set up in the factory.

The Court: That is what I mean, is it set up so that more games are lost than won, is that it?

A. Well, I don't know how it is set up.

The Court: But it can be?

A. Oh, yes.

The Court: In other words, it doesn't depend upon chance, the operation of this machine?

A. Let me straighten that out. It works on the law of average is what it actually is, which, over a period of time, should be to the advantage of the machine.

The Court: Because there are more non-winning combinations on it than there are winning combinations on it? A. Right.



(Testimony of Glen Tarbox.)

The Court: It is not otherwise adjusted?

A. Not to my knowledge.

The Court: Or can it be otherwise adjusted?

A. Not to my knowledge.

Q. Now, when you were speaking, when you were talking about plates or discs here, when you make reference to the reels or drums of a slot machine, is this the part they are speaking of, [41] or are they speaking of a different reel or drum when talking about reels and drums on slot machines? What would you refer to these in your slot machine business?

A. A reel or drum on a slot machine is different than that.

Q. Going over here, on the old type slot machine, the score was registered, was it not, by the reel that revolved and had insignia on it and then came to a stop in your old type slot machine?

A. That's right.

Q. It was that reel or drum that revolved that was commonly called the reel or drum of the slot machine?      A. Right.

Q. This one you were talking about was referred to as a disc or plate, am I correct?

A. I would say so, yes.

The Court: Court will stand in recess until 20 minutes after 11.

(10-minute recess.)

Mr. Magagna: I have no more questions, your Honor.

(Testimony of Glen Tarbox.)

### Redirect Examination

By Mr. Cyr:

Q. Mr. Tarbox, on cross-examination they asked you about the coin slot. It is true, isn't it, this yellow button has replaced the coin slot on the slot machine? [42]

A. It is used to start the machine, yes.

Q. Yes. It serves the same function. You were asked whether or not these counting devices appear on other machines and you stated that they appeared in pinball machines. I will ask you if a pinball machine contains the guts of a slot machine as this machine does? A. No.

Q. You were asked if they were on phonographs. I will ask you if a phonograph machine contains the guts of a slot machine as these machines do? A. No.

Q. Do any of the other machines where these drums or reels are used contain the guts of a slot machine as these machines do? A. No.

Q. Now, you were asked about the three discs which appear in the part I refer to as the guts of the machine. You stated the slot machine had a reel or drum with fruit or bar bells on it. I would ask you if that slot machine, whether the drums could be removed by cutting the spokes in there, and whether the machine would operate without those?

A. Yes.

Q. It is true, is it not, that those drums or reels on a slot machine are merely for the purpose of

(Testimony of Glen Tarbox.)

showing the player whether he won or lost? [43]

A. Yes.

Q. The drums or reels on this machine are for the same purpose, are they not?

A. I would say yes.

Q. In fact, you could on these machines, if you wanted to, you could remove any of a combination of parts and still have a working mechanism of some kind, you could make some wheels turn or some—you don't need any of the machine to make the others function mechanically? A. No.

Q. To make the machine complete as it stood, Exhibit 1 and 1-A and 2 and 2-A, the drums which appear on the face of the machine marked 1 and 1-A and 2 and 2-A are an essential part of the machine as it is now constituted, make it a complete unit as it now stands? A. Yes.

Q. And just for the record, on the slot machine, when these three widely spaced discs in the guts of the machine would record a winning combination that would indicate to the player he had won, but rather than a tally, that actually paid in cash, isn't that the way the machine operated? A. Yes.

Q. Now, would you step down, please, and take a look at the insides of this machine, the hull of the machine which is marked as Plaintiff's Exhibit 1. Referring to the notches [44] in the bottom of the wood and the notches and cutout on the face casting, does that appear to be the same as was on the slot machine where the coin payout was?

(Testimony of Glen Tarbox.)

A. I couldn't say, but it appears to be.

Mr. Cyr: You may sit down. The Government rests, your Honor.

### Recross-Examination

By Mr. Magagna:

Q. Now, the Government attorney has asked you a question if the pinball machine contained the guts of a slot machine. Now, going into what are the guts of a slot machine, referring to this, are there some other guts of a slot machine or machines you worked on beside these? A. Yes.

Q. Did the slot machine have a tube or container to receive money? A. Yes.

Q. It had an escalator to handle money?

A. Yes.

Q. It had a place for money to be inserted?

A. Right.

Q. It had a payout slot for money to come out of? A. Yes.

Q. In your opinion as an expert, which part is the guts of [45] a slot machine, this or the payout mechanism?

A. Well, it takes the whole thing to operate.

Q. So when you answered that this did have the guts of slot machine, you were referring that it had some metal like a slot machine, and some discs like a slot machine, you didn't intend to testify this had the guts of a slot machine? A. No.

(Testimony of Glen Tarbox.)

Q. Those words were put in your mouth when he asked you the question in that manner?

A. My interpretation was that there are parts on this one, the main part of this, the part here (indicating) is part of the mechanism of the slot machine.

Q. Now, if you were going to take this particular thing, this particular unit now and going to try to convert this back into an old time slot machine like the ones you worked on, what would you have to add to the thing to make it the same as the old time slot machine?

A. Well, there is considerable, you would have to put symbols, a release with symbols on, you would have to have a payout tube, slides to control your payout.

Q. Now, when you testified that this button replaced the coin hole for the slot machine, does this replace it?      A. I said it did the same job.

Q. It does the same job?

A. Starts the machine. [46]

Q. It releases the machine so that it can work?

A. Yes.

Q. Now, I believe he asked you to look down here at this particular thing (indicating). Is there anything on this casting, this front casting—could this be used as it now stands—it looks like the front of the casting, if you took the casting off and kept all the other mechanism intact and set this casting on and bolted it on, would the thing work?

A. What do you mean by work?



(Testimony of Glen Tarbox.)

Q. Could you operate a slot machine and could you play it by using this identical casting? What I am trying to make out, this thing could not be converted over. There is no place you could knock out a plug, no tube, you would have to reshape it?

A. Right.

Q. It isn't interchangeable from this unit to the old time slot machine case?

A. The front isn't, no.

Q. Again, going back to this counting device that is on here, I believe he says as now constituted, it is an essential part. What does this counting device do, specifically, on this machine, just what does it do?

A. It records for the patron how many free plays he has left.

Q. It in no way controls this guts of the old time slot [47] machine?

A. No, it allows him to start it or stop it is all.

Q. It allows him to start or stop it?

A. It allows this thing to operate is all.

Q. Now, you have examined this particular machine, I presume, in detail? A. Yes.

Q. With reference to the shell or hull, by examination was this hull or shell made in the same manner—was it made in such a way it could have been used either for this machine or a slot machine?

A. The unit as a whole, you are talking about?

Q. I am talking about just this hull with the front casting, the markings where the grooves have been cut to set the machine in?



(Testimony of Glen Tarbox.)

A. Without putting a slot machine right beside, I couldn't tell, but they are quite similar.

Q. Are there any grooves indicating you could pull this unit out and set the other unit in, are the grooves cut so it would just fall in place?

A. You are talking about this mechanism here (indicating)?

Q. No. If we went down and located a mechanism of an old time slot machine, could we just take the guts out—using the words of the District Attorney—and set it in? Are there grooves and things cut so it would fall automatically in place? [48] What I am trying to get at, this case was made for this unit, and it isn't a conversion job of an old case made for a slot machine unit?

A. That I couldn't say without putting two of them side by side.

Q. Is there any grooves or cuts here that you could identify here as being indentically the same as slot machines are—I will withdraw that last question. If you don't know, I guess we can't find out. Now, when this machine is set up and operating—look at this one here (indicating)—and if we connect the unit and kick it on, is there anything about the machine, that is, I am talking strictly now about the machine, that in any way, after you have played, and assuming you are lucky or skillful, that you get the Bingo combination here, is there anything about the machine that will deliver to the player money or merchandise, anything of value, the machine itself?           A. No.

(Testimony of Glen Tarbox.)

Q. There is no apparatus that the player could get it directly from the machine? A. No.

Mr. Magagna: That is all. We have no further questions.

Mr. Cyr: We have no further questions.

(Witness excused.)

Mr. Cyr: The Government rests. [49]

The Court: Very well, any evidence for the claimant?

Mr. McCarvel: Your Honor, at this time, we would like to make a motion.

The Court: Just one minute before you make the motion. All the testimony has been directed primarily to Exhibits 1 and 1-A. Are Exhibits 2 and 2-A similar.

Mr. Magagna: It would stand. The testimony would be the same, and we thought in order to avoid duplication, we agreed.

The Court: Proceed with your motion.

#### Motion to Dismiss

Mr. McCarvel: Your Honor, I would like to make a motion at this time that the amended libel of information be dismissed on the ground and for the reason that it hasn't been shown by any of the evidence that this machine is the type of machine that has been outlined by the Johnson Act, and it hasn't been shown that this machine has the elements that the act requires. More particularly, referring the Court's attention to Title 15 of the

United States Codes, Section 1171, which defines a gambling device as follows: "Any so-called slot machine, or any other machine or mechanical device, an essential part of which is a drum or reel with insignia thereon—" and we submit, your Honor, there has been no evidence presented here that there are drums or reels with insignia thereon that this section defines. And, also, there has been testimony here that this machine has been used as [50] a gambling device, but there has been no evidence in reference, referring again to the Johnson Act, or Subdivision (a) of Paragraph 1 thereof, "that which, when operated, may make delivery as the result of the application of an element of chance, any money or property," or Subdivision (b), "by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property." Now, your Honor, we submit under the evidence presented here by the Government that it hasn't been shown that there are any drums or reels on this machine with insignia thereon that are an essential part of this machine. It hasn't been shown that the machine itself pays out any money or any property, and we ask at this time that the action be dismissed on that ground.

The Court: I will reserve ruling on your motion. You may present any evidence that you wish.

## JAMES J. HANNIFIN

claimant, called as a witness in his own behalf,  
being first duly sworn, testified as follows:

## Direct Examination

By Mr. McCarvel:

Q. Will you state your name, please?

A. James J. Hannifin. I reside at 15 South Excelsior, Butte, Montana. [51]

Q. Referring to the Government's Exhibits Numbers 1 and 1-A, and 2 and 2-A, are you the owner of these machines?      A. I am.

Mr. McCarvel: That is all.

## Cross-Examination

By Mr. Cyr:

Q. From whom did you purchase the machines?

A. Buckley Manufacturing, Chicago.

Q. Who transported them in interstate commerce?      A. American Railway Express.

Mr. McCarvel: To which we object as going beyond the scope of direct examination.

The Court: I think you said it has been admitted they were transported in interstate commerce.

Mr. Cyr: I am asking whether he bought them or——

Mr. McCarvel: It is immaterial.

The Court: What difference does it make?

Mr. Cyr: Withdraw the question. That is all.

Mr. McCarvel: That is all.

(Witness Excused.)

Mr. McCarvel: We would appreciate it very much if we could have a recess until after lunch to go over this matter and get our witnesses together.

The Court: Very well, Court will stand in recess then until [52] two o'clock this afternoon.

(Noon recess.)

Mr. Cyr: Your Honor, there is one matter before we proceed. I would like to re-open the Government's case and request the Court to take judicial notice of some matters I think might be of some assistance to the Court, being the case of the United States of America against One Joker Type Slot Machine, Third Division, Territory of Alaska, Anchorage, in which the same machine was held to be a gambling device under the same section. I wish to move the Court also to take judicial notice of the Report of the House of Representatives 2769 in the 81st Congress, Second Session, of August 1, 1950, and the Report of the Senate 1482, 81st Congress, Second Session, April 12, 1950, legislative day March 29th. That is all we have.

Mr. Magagna: I presume he is not attempting to offer this in evidence. That would be brought in as a matter of argument.

Mr. Cyr: I have asked the Court to re-open the Government's case for the purpose of requesting the Court to take judicial notice of those matters for the purpose of providing our position on the law and what other Courts have done with reference to these devices.



The Court: The Court will accept them. You have copies of the Report of the Senate? [53]

Mr. Cyr: Yes, your Honor, I do have copies here. If the Court wishes these, they are printed, both of them. I think the Court has them. I don't have the page number of the published reports.

The Court: The Court will accept those as an aid to interpret the statute, and so far as the case in Alaska is concerned, it is like any other case in a book, I'll read it in connection with my efforts to make a determination of what the law is.

Mr. Cyr: I don't know it is reported in Federal Supplement, but I did get certified copies of it.

Mr. Magagna: Could I ask you again which reports you mentioned, what are the numbers of them?

Mr. Cyr: Report of the House of Representatives 2769 and Report of the Senate 1482.

Mr. Magagna: I wanted to see if we were talking about the same ones.

The Court: Very well, you may proceed.

### BERNARD T. McMANUS

called as a witness on behalf of the claimant, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Magagna:

Q. Will you state your name and place of residence? [54]

A. Bernard T. McManus, Lander, Wyoming.



(Testimony of Bernard T. McManus.)

Q. By what company are you employed at the present time?

A. Buckley Manufacturing Company, Chicago.

Q. In what capacity? A. Sales Manager.

Q. Do you have any other business interests in addition to your employment by the Buckley Manufacturing Company?

A. Yes, I have two drug stores in Wyoming.

Q. Where are they located?

A. Casper and Rawlins.

Q. The Buckley Manufacturing Company you are talking about is the Buckley Manufacturing Company that manufactured Plaintiff's Exhibits 1 and 2, that is, not in their entirety?

A. Yes, sir.

Q. And 1-A and 2-A?

A. Yes, sir. They don't manufacture all the parts, but they assemble them.

Q. Does the Buckley Manufacturing Company do any other business other than assembling these particular machines?

A. Yes, they make kitchen stools, and they make some slot machines, all special order for Nevada, and they make an Irish Mail toy, and they also make Block City toys, things of that kind.

Q. Prior to the time you became an employee of the Buckley Manufacturing Company, did you have any connection with these [55] machines or similar machines?

A. Well, I don't know just how you mean that. I invented the machine, if that is what you mean.

(Testimony of Bernard T. McManus.)

Q. Did you have anything to do with designing or manufacturing these machines? A. Yes.

Q. And what was your connection in that regard?

A. Well, I was the inventor of the machine and did make or assemble them much the same as Buckley does now.

Q. Did you ever make—when did you first conceive of this machine?

A. In the fall of 1949.

Q. Did you ever make application for letters patent on the machine?

A. Yes, sir, in the spring of—I can't remember the month, but it was in the spring of 1950.

Q. And was there a patent ever issued on it?

A. Yes, sir.

Q. Do you know when that was done?

A. Well, there has been an awful lot of patents issued on it. I just don't remember the first date. It takes quite awhile, 1951, or 2, I can't remember the exact date.

Q. Now, was your patent application filed prior to or after the enactment of the Johnson Act?

A. Prior to. [56]

Q. I mean did you file for a patent before the passage of the Johnson Act? A. Yes, sir.

Q. Now, at the time you designed the machine and filed for letters patent, did you have knowledge as to the proposals of the Johnson Act?

A. No, sir.

Q. Your designing of this machine was not for

(Testimony of Bernard T. McManus.)

the purpose of evading the terms of the Johnson Act?        A. No, sir.

Q. Now, did the question of whether or not the machine that you had invented—did the question of whether or not the machine you invented come under the purview of the Johnson Act come up before this case here?        A. Yes, sir.

Q. When did that come up?

A. I believe in 1952.

Q. Where did that case come up first?

A. In the State of Wyoming.

Q. In what Court?

A. The Federal Court at Cheyenne.

Q. Now, what was the case about in Cheyenne?

Mr. Cyr: To which we object, your Honor, on the grounds this is not the best evidence. The best evidence is the case itself, which is reported in the Federal Supplement. [57]

Mr. Magagna: That one is not reported in the Federal Supplement. If you want to stipulate, I have copies here, and I will introduce it as the best evidence.

Mr. Cyr: Fine.

Mr. Magagna: Insofar as the judgment was—I was asking what the case was about in relation to the machine, whether this type of machine or another type machine.

Mr. Cyr: We understand it is this machine. I didn't understand what you were aiming at.

Mr. Magagna: There is a distinguishing feature between the two machines. You have a copy of this?

(Testimony of Bernard T. McManus.)

Mr. Cyr: Yes, that is United States vs. McManus?

Mr. Magagna: Yes. It would be the same as the other.

Mr. Cyr: Yes.

Q. The point I am trying to get at, Mr. McManus, is that in the case in Wyoming, there was introduced as exhibits a machine, I think, marked as Exhibit "A," and a second machine which was introduced by the defense as Exhibit "B"?

A. Yes.

Q. Now, what was the difference between the two types of machines?

A. Well, the Exhibit "A" was a machine similar to this exhibit, except instead of the flashing lights in front, it had reels and drums with insignia thereon that the slot machines were using at that time, and that was the machine I was [58] indicted on for interstate transportation.

Q. The machine that was introduced as Exhibit "B," how did it compare to this particular machine?      A. It was like this one here.

Q. It was called the Joker—could I see the insignia? I haven't even looked at these machines.

A. Yes, the same insignia, but not like this Bingo. It was the same type and everything, but it didn't have Bingo, it had the fruit symbols on it.

Q. This plate was like this instead of like that (indicating)?      A. Yes.

Q. Now, with reference to that machine, had

(Testimony of Bernard T. McManus.)

that machine been transported in interstate commerce at that time?      A. Which one?

Q. The second one?      A. Yes, sir.

Q. Were you indicted on the transporting of that machine?      A. No, sir.

Q. Now, Mr. McManus, going to you as being the inventor and designer of this particular machine, you have had occasion to see slot machines?

A. Yes, sir.

Q. Now, with reference to this counting device here that shows these numbers here, and the same thing that is in your [59] remote control, are those type of counting devices on your old type slot machine?      A. No, sir.

Q. Now, have you had—are those manufactured especially for this machine, or are they purchased on the market?

A. They are purchasable and nationally advertised for any type machine that needs a recording device.

Q. Now, do these particular counting devices have anything to do with the operation of the machine other than recording the score?

A. Well, they record, as was testified, they show the purchases of games to be played, and the score received.

Q. Do they in any way control this mechanism here as to how many times they turn around or where they wind up or where they stop (indicating)?      A. Merely a recording device.

Q. It is merely for recording the number of



(Testimony of Bernard T. McManus.)

plays at the beginning and the number of plays that come out of the machine?      A. Yes, sir.

Q. Could you operate the machine if you were to take those two recording devices out from the respective units?      A. Yes, sir.

Q. Now, going with specific reference, and taking this a part at a time, with reference to the plate or casting here [60] on the front, was that designed specifically for this machine?      A. Yes, sir.

Q. Could this be interchanged and used in conjunction with the plate for a slot machine?

A. Impossible.

Q. Specifically, is there any place where any coin slots could be put into this plate without making it over?      A. Impossible.

Q. Now, with specific reference here to this yellow spot on the top where this yellow block is, is there any slot there where a coin could be dropped into the machine?

A. There is no slot, no escalator or any tube or anything like that.

Q. With reference to this button here, is that used on a slot machine?      A. No, sir.

Q. Now, you also designed the case or the hull that the whole machine is in. Other than being similar in appearance, is that interchangeable with the hull used by a slot machine?

A. One piece of the top is, and the lock part is, but the other has fittings and things that it wouldn't work. The back door, I believe, I am pretty sure,



(Testimony of Bernard T. McManus.)

would fit one, and the top part that goes in the back would.

Q. What I was wondering, if you were to take this mechanism here out and this bottom electrical part out, could you set [61] the workings of a slot machine in here and have it so it would fit and be able to work in this case?

A. I would say no. You might be able to get it in there some way, but even that carriage is all different, everything is different in there.

Q. Going specifically to the similarity of the slot machine part of it, what are the essential parts of a slot machine that don't show here at all?

A. If you take in the brackets——

Mr. Cyr: We will object to this on the ground the witness has not been qualified as an expert regarding slot machines. We have no doubt he is, but we would like to have him qualified for the record.

Mr. Magagna: I think the witness has showed he invented this particular machine. He can testify——

The Court: I think it would be better if you would qualify him further. I know he knows something about slot machines.

Q. Mr. McManus, have you had occasion to see slot machines? A. I am afraid I have.

Q. At the time you were working on this particular machine, did you have a chance to examine and look at a slot machine? A. Yes, sir.

Q. Going to the next step on that, have you made a comparison as to the difference between this machine and an actual slot machine? [62]

(Testimony of Bernard T. McManus.)

A. I have not made an actual comparison. I can do it here in a hurry.

Q. Have you looked at one and looked at the other to see where they differ? A. Sure.

Q. Going from there, in what respects do they differ particularly?

A. Well, it would be easier to tell you how—pardon me—I mean there is so many things.

Q. Let me withdraw that question and ask it this way: Does the slot machine have a slot for the insertion of a coin?

A. I think I know what you mean now. It has, of course, first, and then it has an escalator that takes the coin through a process to be sure it is not a slug, that it is a coin. The coin, it drops down and trips a lever that releases the handle to work the mechanism. Do you want me to go further on what happens then?

Q. Does this machine have any such part as that?

A. No, sir, that is a lot of parts. An escalator will take several hundred parts.

Q. Does the slot machine have a box for the receiving of coins? A. No, sir.

Q. Slot machine? A. Yes, sir. [63]

Q. Does this machine have? A. No, sir.

Q. Does the old slot machine have a place for the dispensing of coins? A. Yes, sir.

Q. Does this particular machine have such a place? A. No, sir.

Q. Now, with reference to this machine here, Plaintiff's Exhibit 2, after it is played—or put it this

(Testimony of Bernard T. McManus.)

way: when the handle is pulled, what happens that the patron can see?

A. On this particular one, the different numbers light up, the lights behind go on and off and come to rest finally on one in each of the columns.

Q. When the play is completed, there is a light on in each of the columns? A. Yes, sir.

Q. Now, in making that comparison with the old type slot machine, what happened that the patron could see when he pulled the handle?

A. On the drums or the reels, the insignia would line up in a straight row. Whatever lined up in the straight row with the score card in front was what he was entitled to.

Q. In any part of either of these two machines is there any of the reels or drums you have just mentioned that were on the old type slot machines, in these machines? [64] A. No, sir.

Q. Now, were you ever advised, either directly or indirectly, as to whether or not this type machine, by any governmental agent, as to whether this type machine would or would not come under the Johnson Act?

Mr. Cyr: To which we object on the grounds it calls for hearsay.

The Court: Do you want the Court to be bound by what somebody told him or didn't tell him?

Mr. Magagna: I want the testimony to show——

The Court: Somebody else had another idea?

Mr. Magagna: That is correct, whether he was

(Testimony of Bernard T. McManus.)

told whether it was in violation or not. He is the manufacturer of the thing.

The Court: The unfortunate thing, it is going to be my responsibility to determine that, however poorly qualified I may be. I don't see how it could help me by telling me John Jones in Washington, D. C. doesn't think this is covered by the Act, because I suppose there are some people who don't think it is covered by the Act, as there are some people who think it is.

Mr. Magagna: I think we can raise that point in argument anyway, so we will probably handle it there.

The Court: Yes, that's right.

Mr. Magagna: That is all, you may cross-examine. [65]

The Court: Before you finish here, you might demonstrate the machine to me, that is, play five or 10. You have had him describe it.

Q. Will you step down and demonstrate it.

A. (Demonstrating) The plays, your Honor, are stepped up on this machine here. That is 10. That releases the handle for the number of times that the patron has played the machine.

Q. Just one minute, so we will have it in the record. The remote control device, which is marked Plaintiff's Exhibit 2-A indicates a number 10. Now, referring to Plaintiff's Exhibit 2, what does it show as to the number?

A. It shows also that the player has 10 games to be played.

(Testimony of Bernard T. McManus.)

Q. Now, will you proceed.

A. (Demonstrating) You—to release the handle, you press that button, and it releases it for one, and this drops down to 9.

Q. The scoring device mark goes down to 9 after one play.

(Witness plays the machine.)

The Court: You have got your own system, have you?

A. I was going to try to show you something, your Honor.

(Witness plays machine several times.)

A. I am all through.

The Court: Now, you can't play it again?

A. That's right.

Q. Now, while that was being played, there is just one other [66] question, insofar as in this working mechanism, are there any reels or drums that are turning?

A. No, sir.

Mr. Magagna: That is all.

### Cross-Examination

By Mr. Cyr:

Q. Mr. McManus, how long have you lived in Lander, Wyoming?

A. 25 years.

Q. During the course of that time——

A. 23, pardon me, I believe 23 years.

Q. During the course of that time, have you been engaged in the business of coin operated machines prior to the invention of this device?



(Testimony of Bernard T. McManus.)

A. Yes, sir.

Q. For how long have you been engaged in coin operated machines there?

A. Well, it was strictly a side line in my drug stores. I had machines, and a few friends—I had two machines.

Q. Did you have some slot machines among those? A. Yes, sir.

Q. Were you familiar with the operation of slot machines? A. Yes, sir.

Q. And the working parts of them prior to your invention of this device? [67]

A. I didn't get that.

Q. You knew the workings of your slot machines prior to your invention of this device?

A. Yes, sir.

Q. How long had you had slot machines prior to that?

A. Well, like everybody else, we would have them sometimes and sometimes we wouldn't.

Q. Intermittently for how many years?

A. Oh, probably seven or eight years.

Q. So you were pretty well familiarized with the workings and operation of slot machines?

A. Yes, sir.

Q. By that, I am referring to the old type, not the old innovation? A. The what?

Q. You stated, I believe, on direct examination that there were only two parts of this machine which would be interchangeable with the slot machine?

A. No, I didn't say that, I said of the shell.



(Testimony of Bernard T. McManus.)

Q. Of the shell? A. Yes, sir.

Q. What parts are those? Would you indicate to the Court on Plaintiff's Exhibit 1, that being the same as Plaintiff's Exhibit 2?

A. They being this back piece (indicating), I think it would [68] fit.

Q. The plate which is behind the button on the top of the machine? A. Yes, sir.

Q. And what else? A. And the locked door.

Q. And the door on the back? A. Yes, sir.

Q. Now, calling your attention——

A. If I may qualify that, I didn't consider the handle.

Q. But that is interchangeable, is it not?

A. They have to be fitted, but it could be fitted.

Q. We want the Court to know all the facts.

A. I am talking about the shell.

Q. How about the base of this machine, isn't it true the base of the machine——

A. That is the shell. We get these from a manufacturer, this and this is part of the shell, this is the plate in front, and this is the top, and that is the door (indicating).

Q. Is it true that the base could be used for the shell of a slot machine?

A. It might be fitted, you could woodwork it.

Q. I refer you to the cut-out in front. Isn't that the same size and shape as the cut-out for the pay-out on slot machines? [69]

A. I couldn't tell you.

(Testimony of Bernard T. McManus.)

Q. It appears to be?

A. Yes. I couldn't tell you if it would fit or not. Those are bought manufactured, in other words. I could cut wood any way. I couldn't tell you by the shape of the piece whether it would fit or not.

Q. They may be old parts of slot machines, some parts of them?

A. No, they are all brand new, ordered.

The Court: Let me ask a question. Do you order that that way?

A. I am not in the ordering department.

The Court: You designed the machine. Did you design it that way?

A. With a piece cut in the wood there?

The Court: Yes.

A. No, I don't know—it is this part here cut out in the base that I couldn't say.

The Court: You don't know whether you designed it that way or not?

A. Well, my first machine was hand made, which I made myself and was a different manufacture.

The Court: Just answer the question directly, if you can. If you can't just say so. Did you design it that way?

A. With the wood cut out like that? [70]

The Court: Yes.

A. No, sir.

Q. You have testified concerning the chromium plate in front of this machine? A. Yes, sir.

Q. There is a casting that is attached to that by screws, is there not, which is also cut out on the bottom to conform to the cut-out of the base plate?

(Testimony of Bernard T. McManus.)

A. This casting, I paid a man to design it myself.

Q. How about the casting inside, did you pay him to cast it in that fashion?

A. That is all one piece.

Q. Aren't there screws here (indicating)?

A. This part here (indicating)?

Q. Yes, the part inside, to conform to the cut-out in the base plate.

A. That is still not the shell of the machine.

Q. Did you design it in that fashion?

A. No.

The Court: Speak up.

Mr. Cyr: The answer was "No."

Q. Now, the outside appearance of the machine, referring to the contour and shape, that is the same contour and shape as a slot machine, is it not?

A. Yes, sir. [71]

Q. And referring to the legend of pay-outs, or schedule of payments which appears on the face of the machine, that is showing "Three Jokers, 100," that is similar to what appeared on the face of a slot machine, is it not?      A. Somewhat.

Q. So, there are other similarities than those you mentioned between this and a slot machine. I mean just the shell?

A. That is called the score plate, it is not the shell. It may be my fault. When I said "shell," I was thinking in terms of what the parts are called.

Q. Now, referring to what I have crudely termed the guts of the machine for want of a better

(Testimony of Bernard T. McManus.)

word, that operates in the same fashion as a slot machine, does it not?      A. Very similar.

Q. And I believe you testified, for instance, that on this—strike that—Would you step down here and point to the mechanism on this which controls the number of games won, which portion of this, can you tell me?

A. The number of games won?

Q. Which of the controls here?

A. I can show you how it works.

Q. Yes, do that.

A. (Demonstrating) It is activated——

Q. Now, that operation is mechanical, is it not?

A. Yes, sir. [72]

Q. The handle which performs the function which your fingers did in pushing this down?

A. Yes, sir.

Q. Here I see there is one, two, three discs which have contact points (indicating)?

A. Yes, sir.

Q. Those have replaced which was formerly a drum and reel with insignia in the slot machine?

A. Yes, sir.

Q. In a slot machine, it is true, is it not, they could have taken the drums and reels off, that it is the portion at the extreme end with the three close set, notched discs that controls the pay on the machine, is that true?

A. Well, they contribute to it.

Q. Well, they control it, as a matter of fact, don't they, on a slot machine?

(Testimony of Bernard T. McManus.)

A. Well, they are part, it takes more than just them.

Q. These three things (indicating), they don't do anything other than indicate to the player whether he won or lost, what was formerly described as drums or reels? A. That's right.

Q. They have no purpose except to show him whether he has won or lost upon pulling the handle?

A. That's right.

Q. And they are in no way essential to the operation of the [73] slot machine, are they?

A. That's right.

Q. And the electrical portion of the machine, all of this wiring, is designed for the purpose of replacing what you have referred to as the coin slot, the escalator, the coin tube, the pay-out box, is that right?

A. Well, I don't know whether you mean replace them or not.

Q. Well, in other respects, it operates the same as the slot machine, doesn't it?

A. No, no, it has similarities, but it doesn't operate the same.

Q. I say in other respects, those electronic control—strike that. Go through it this way: rather than putting a nickel in this machine, you give the nickel to the bartender who records the game on the black box marked 1-A or 2-A?

A. That's right.

Q. As the result of paying the nickel to him



(Testimony of Bernard T. McManus.)

rather than putting it in the slot, you are entitled to push the button in the same place as the coin slot?      A. Yes, sir.

Q. And that entitles you to pull the handle, which was the same result you obtained by putting a nickel in the machine?

A. It activated the machine.

Q. As a result of pulling that handle, lights flash on the face of these to entertain the customer? [74]      A. That's right.

Q. As a result of where these things on the right side, I don't know what you call them come to rest on three sprockets——

A. Sprockets is right.

Q. That determines whether or not the player wins or loses, is that right?

A. That is the final analysis, yes.

Q. As a result of the action of that machine, there is recorded on these three drums or reels——

A. We don't call them that.

Q. That is what I call them—with the numbers on them, either one game less, if you lose?

A. Yes, sir.

Q. Or some additional games if you win?

A. Yes, sir.

Q. So, each time you pull the handle, it has an effect on those wheels, and causes them to move, either by decreasing the number or increasing?

A. Yes, sir.

Q. It has the same effect on these black boxes, 1-A or 2-A, does it not?      A. Yes, sir.



(Testimony of Bernard T. McManus.)

Q. Now, I believe you stated that these recording devices can be purchased on the market for other machines? A. Yes, sir. [75]

Q. Isn't that true of many of the working parts of this, the wire which is included in it?

A. Yes.

Q. The button? A. Yes, sir.

Q. Many of the parts of the mechanical slot machine can be used in cash registers or business machines, can they not? A. Yes, that's right.

Q. But the fact is, all these component parts make up this machine which you have designed and which is manufactured by the Buckley Manufacturing Company? A. Yes, sir.

Q. That is the machine as it was designed, with the exception you have stated in previous cross-examination?

A. That wasn't the original machine. I don't want to get confused. There was two machines, originally. If you will re-phrase that question, maybe I can answer it, that last one, sir.

The Court: I suppose what you want to know is, did you design this machine that is Exhibit 1?

A. Yes, sir.

Q. Yes, it was designed in this fashion, except for the differences which you pointed out, the holes and the other thing which appears to be like a slot machine? A. Yes, sir. [76]

Q. When you designed this machine, you put all of these things on here with a specific purpose in mind, did you not?

(Testimony of Bernard T. McManus.)

A. In other words, to save money.

Q. The idea was that the component parts would make the machine which is the machines, Exhibits 1 and 2 which are here?

A. That people would play.

Q. In the design of this machine, you had in mind economy of parts and money, did you not?

A. I sure did.

Q. You didn't, therefore, put in parts that were not necessary to the machine?

A. Do you mean mechanically, or customer appeal?

Q. By reason of expense and economy, you didn't use any parts that were not necessary, did you?      A. I imagine—no.

The Court: Counsel, as the witness pondered his question, the answer he was going to give to the question, I noticed that he looked at you, and I noticed you looked at him and shook your head no.

Mr. Magagna: If I did so, I did it without realization, your Honor, that question was not discussed by us.

The Court: I didn't say it was discussed by you, I say that is what I saw. I saw the witness not able to answer the question, apparently; I saw you glance at the witness and [77] shake your head in a negative fashion.

Mr. Magagna: It was pure reflex.

The Court: After you shook your head in a negative fashion, the witness answered "No." Because of counsel's statement in the first instance as

(Testimony of Bernard T. McManus.)

to your position in the Wyoming Bar, I would hesitate to say, of course, that it was done with any intent to give the witness the answer, or that it was done contemptuously of this Court, but let me warn you at this point not to let that sort of thing happen again, even inadvertently.

Mr. Magagna: I want to make my position clear to the Court. If it was done, it was reflex action, I didn't even realize he was looking at me.

The Court: I realize that, but don't let it happen again. Proceed.

Q. Your answer to that question was no, is that correct?      A. Yes, sir.

Q. Is that the answer you were trying to give?

A. I was looking at you. If you ask them shorter—you get into real long ones, I get confused, I am sorry.

Q. I asked before, you stated you designed this with economy of parts and economy of money, that is correct?      A. Yes, sir.

Q. I said, therefore, you did not put any parts in this machine which were not necessary to its operation. To that [78] question you answered "No," is that correct?

A. I was trying to think back. I have had lots of trouble like any man that starts out trying to build something.

Q. Do you receive royalties from the sale of these machines?      A. Myself?

Q. Yes, sir.      A. Indirectly.

(Testimony of Bernard T. McManus.)

Q. You do, by reason of the sale of these machines, receive some money, then?

Mr. McCarvel: We object to this as being incompetent, irrelevant and immaterial to the charge laid in this case.

The Court: Overruled. He can show the interest of the witness.

Q. You do, you answered that as yes? Now, I don't believe we have clarified that, I don't want to argue with you, do you say no—strike that. Do I understand you there are parts in here which are not necessary, in your opinion, and which should not be in the machine?

A. I must qualify it with not bettering the machine. I would say there isn't any.

Q. There isn't anything in here which is not necessary to the machine, then?

A. I don't think so, sir.

Mr. Cyr: Yes, that is all. [79]

### Redirect Examination

By Mr. Magagna:

Q. I will ask you to step down and examine this part (indicating). You were asked about these sprockets. Are there on there any insignia or markings of any kind on those? A. No, sir.

Q. With reference to the slot machines, what wheels or drums in slot machines had insignia thereon?

A. The drums that were visible to the player.

Q. Now, with reference to this counting device,

(Testimony of Bernard T. McManus.)

did I understand your testimony that the machine could be operated with that device out of there?

A. Yes, sir.

Q. This working part would completely work?

A. Yes, sir.

Q. So you could pull the handle and make it work if you were to take the assembly out?

A. Yes, sir.

Q. What that does is keep track of the number of games and that only?           A. Yes, sir.

Q. We are speaking of this counter.

The Court: Yes.

Q. I believe it has already been testified to, but is there any way when this machine is played as presently assembled [80] that the machine itself will deliver to the patron who plays it any money or property?           A. No, sir.

Q. Now, is there any way that by any simple operation, by taking out a lock or a plate that this machine would be able to deliver to the player money or property?           A. No, sir.

Mr. Cyr: We will object to these questions on the grounds it is immaterial. The law doesn't require the machine itself to pay. I think the wording of it is "such that will cause——"

The Court: At least that is one phase of the law, anyway, with reference to that.

Mr. Magagna: Our purpose in this is to identify which section of the act this would have to come under.

The Court: The objection is overruled.



(Testimony of Bernard T. McManus.)

Q. You answered that, did you not? Is there any way by removing a plate or lock it would pay out money or property? A. No, sir.

Q. There is no way that could be done?

A. No.

The Court: Let's take a short recess.

Mr. Magagna: That is all.

The Court: I'll take a recess and you can decide whether you are through with the witness or not. Court will stand in [81] recess until three o'clock.

(10-minute recess.)

Mr. Magagna: We have no further questions.

### Recross-Examination

By Mr. Cyr:

Q. I have just a couple of questions, Mr. McManus. During the time that you operated these slot machines, you became aware, did you not, that they have a distinct sound when played? You can listen to one, and you can tell it is a slot machine being played, can you not? A. Yes, sir.

Q. The whirring, clicking, and so on?

A. Yes, sir.

Q. Now, that sound is the same as the sound you get from these machines, is it not?

A. Very similar.

Mr. Cyr: Yes. That is all.

Mr. Magagna: No further questions.

(Witness excused.)

Mr. Magagna: The defendant has no further evidence at this time.

Mr. Cyr: The Government has no rebuttal. Your Honor, we would like to submit findings of fact in this.

The Court: Very well. There is one thing, I don't know how [82] material it is. I might—what was the name of the witness, the fellow, the man who said he was the bartender at the Eagles'?

Mr. Cyr: Ole Nelson.

The Court: Is he present?

Mr. Cyr: Yes.

The Court: Would you come forward, please? I want to ask him a question. You can make an objection to the question if it is not proper, and I'll determine whether I am right or not. Did I understand that both these machines, Exhibit 1 and Exhibit 2, and 1-A and 2-A were in the Elks' Lounge or bar?

Mr. Nelson: Eagles'.

The Court: Eagles' Bar, pardon me.

Mr. Nelson: They were, sir.

The Court: You testified they were played by patrons or members giving you some money?

Mr. Nelson: Yes.

The Court: How much money, I mean at a time, how much for a play?

Mr. Nelson: It was five cents a play.

The Court: Each machine was the same.

Mr. Cyr: On that same line, you would pay them a nickel for each point when they played the machine, if they had any left?

Mr. Nelson: Yes, if they had any. [83]

The Court: Any questions, anything further?

Mr. McCarvel: Your Honor, at this time, on behalf of One Electronic Pointmaker——

The Court: On behalf of what?

Mr. McCarvel: Of the defendant in this case.

The Court: Yes.

### Renewal of Motion to Dismiss

Mr. McCarvel: I would like to renew our motion that this action be dismissed on the grounds and for the reason that there has been no evidence introduced by the government that the Exhibits, 1, 1-A, 2 and 2-A consist of a drum or wheel with insignia thereon. Of course, under Section 1117 of Title 15 of the United States Codes, which is commonly known as the Johnson Act, that is an essential element of proof in the case, and there has been no proof adduced as to that in this case.

The Court: Well, would the drum with the numbers on it indicating points, that wheel, whatever it may be called, would that satisfy that portion of the Act?

Mr. McCarvel: We will argue this and submit our authority. Our position is that that is not an essential part of the machine.

The Court: I'll take your motion under advisement and reserve ruling on it as I have your original motion, and you can argue the whole matter in briefs. The Government is given 20 days within which to file a brief. Can you file it [84] within that time?

Mr. Cyr: Your Honor, we have two trial terms coming up next week, I don't know how much——

The Court: If the Government's position is not correct, you have got somebody's——

Mr. Cyr: That's fine, your Honor, we will file it within 20 days.

The Court: You have got somebody's equipment here, unless the defendants themselves want additional time.

Mr. Magagna: We don't have any objection to giving them 30 days. They will have to send it back to the boss.

The Court: Our experience here in Montana is, I don't know how they operate in Wyoming, but the United States Attorney is the United States Attorney and is counsel for the government and represents the government and they seem to confer some confidence in him, as the Court does, just as the Court reposes confidence in all the members of the bar. Very well, the government is given 30 days, and how much time thereafter do you want to file an answer?

Mr. Magagna: The same amount.

The Court: Very well, and the government may have 10 days thereafter to file a reply if it is deemed necessary.

Mr. Cyr: Should we submit findings of fact and conclusions?

The Court: Yes, I think each party should submit with their [85] briefs proposed findings of fact and conclusions of law.

Mr. Cyr: One other thing, would you like to

look at it like this, or should we have the man put it back together?

The Court: You have one machine together and one apart. I suppose if it is necessary for me to look at it again, you might leave them as they are.

Mr. Magagna: There is one other thing I want to ask. We have stipulated to, or the Court will take notice of. I presume we can submit as argument the argument on the Senate floor and the House floor as to what the various Senators and Congressmen thought from the official Congressional Record?

The Court: Yes.

Mr. Magagna: The reason I asked the question, in our jurisdiction we have an agreement we can quote from the Congressional Record in argument, not as evidence.

The Court: Yes, because the Court can use official documents of the Government in searching for the proper interpretation and meaning of the statute. You can use it likewise in argument. Anything further to come before the Court?

Mr. Cyr: Nothing further.

The Court: Court will stand in recess. [86]

### Reporter's Certificate

I, John J. Parker, certify that I am the Official Court Reporter of the above-entitled Court, and that as such I attended the trial of the consolidated actions of United States of America, vs. One Electronic Pointmaker, also known as the Joker Ma-



chine, Serial Number X550378, being Cause No. 502 of the records of said Court, and United States of America, vs. One Electronic Pointmaker, also known as the Bingo Machine, Serial Number X550518, being Cause No. 503 of the records of said Court, held at Butte, Montana, on January 12, 1956, and reported in shorthand all of the proceedings had at the trial of said consolidated actions; that thereafter I transcribed said shorthand, and that the foregoing is a full, true and correct transcript of the proceedings had at said trial.

Dated this 30th day of January, 1956.

/s/ JOHN J. PARKER,  
Official Court Reporter.

[Endorsed]: Filed January 31, 1956. [87]

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[Title of District Court and Cause.]

Civil No. 502

## DOCKET ENTRIES

1955

- Dec. 6—Filed Libel of Information for condemnation (Issued Monition).
- Dec. 6—Filed Monition and warrant of arrest.
- Dec. 7—Filed Amended Libel of Information.
- Dec. 12—Filed Motion for Publication of Notice of Seizure.
- Dec. 12—Filed Order for Publication.
- Dec. 16—Filed Marshal's Return on Notice of Seizure, attached hereto.

1956

- Jan. 5—Filed Claim of Owner.
- Jan. 5—Filed Answer of James J. Hannifin.
- Jan. 5—Entered record return on monition set for  
Thursday, Jan. 12, 1956, at 10:00 a.m.
- Jan. 5—Filed proof of publication.
- Jan. 9—Filed 3 praecipes for U. S. witnesses.
- Jan. 11—Filed 3 subpoenas.
- Jan. 12—Filed 2 praecipes for U. S. witnesses.
- Jan. 12—Entered record of trial, order granting  
time for findings and briefs.
- Jan. 12—Filed reporter's notes.
- Jan. 13—Filed subpoena.
- Jan. 31—Filed transcript of evidence.
- Feb. 11—Lodged Libelant's proposed findings of  
fact and conclusions of law.
- Feb. 13—Filed brief of plaintiff.
- Feb. 13—Filed affidavit of mailing.
- Mar. 12—Filed brief of Libelee.
- Mar. 12—Lodged Libelee's Proposed Findings of  
Fact and Conclusions of Law.
- Mar. 12—Filed Affidavit of Service by Mail.
- Apr. 2—Filed Findings of Fact and Conclusions  
of Law.
- Apr. 4—Mailed copies of Findings of Fact and  
Conclusions of Law to counsel for respec-  
tive parties.
- Apr. 6—Filed and Entered Judgment and Decree  
of Condemnation.
- Apr. 6—Filed Judgment Roll.
- Apr. 7—Filed Bill of Costs (\$78.76).

1956

- Apr. 7—Filed Affidavit of Service by Mail, Re:  
Copy of Judgment and Decree of Con-  
demnation, and Bill of Costs.
- Apr. 20—Filed Notice of Appeal.
- Apr. 20—Mailed Copy of Notice of Appeal to U. S.  
Attorney, counsel for Plaintiff.
- Apr. 20—Filed Bond on Appeal.
- Apr. 20—Filed Designation of Record.
- Apr. 20—File Statement of Points.
- May 28—Filed and Entered Order Extending Time  
for Filing Record on Appeal and Dock-  
eting the Appeal (July 15, 1956).
- May 28—Mailed copies of last above order to  
counsel for respective parties.
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[Title of District Court and Cause.]

Civil No. 503

## DOCKET ENTRIES

1955

- Dec. 6—Filed Libel of Information (Issued  
Monition).
- Dec. 6—Filed Monition and Warrant of Arrest.
- Dec. 7—Filed Amended Libel of Information.
- Des. 12—Filed Motion for Publication.
- Dec. 12—Filed Order for Publication.
- Dec. 16—Filed Marshal's Return on Notice of  
Seizure, attached hereto.

1956

- Jan. 5—Filed Claim of Owner James J. Hannifin.

1956

Jan. 5—Filed Answer of J. J. Hannifin.

Jan. 5—Filed Proof of Publication.

Jan. 5—Entered Record Hearing Return on Motion set for Thursday, Jan. 12, 1956, at 10:00 a.m.

Jan. 9—Filed 3 Praecipes for U. S. Witnesses.

Jan. 11—Filed 3 Subpoenas.

Jan. 12—Filed 1 Praecipe for Subpoena for U. S. Witness.

Jan. 12—Filed 2 Subpoenas.

Jan. 12—Entered Record of Trial and Order Granting Time for Findings and Briefs.

Jan. 31—Filed Transcript of Evidence (In File No. 502).

Feb. 11—Lodged Libelant's Proposed Findings of Fact and Conclusions of Law.

Feb. 13—Filed Brief of Plaintiff (In File No. 502)

Mar. 12—Filed Brief of Libelee.

Mar. 12—Filed Libelee's Proposed Findings of Fact and Conclusions of Law.

Mar. 12—Filed Affidavit of Service by Mail. (Above Papers in File 502.)

Apr. 2—Filed Findings of Fact and Conclusions of Law. (These Papers in File 502.)

Apr. 4—Mailed Copies Findings of Fact and Conclusions of Law to counsel for respective parties.

Apr. 6—Filed and Entered Judgment and Decree of Condemnation.

Apr. 6—Filed Judgment Roll.

Apr. 7—Filed Bill of Costs (\$79.26).

1956

Apr. 7—Filed Affidavit of Service by Mail, Re:  
Copy of Judgment and Decree of Con-  
demnation, and Bill of Cost.

Apr. 20—Filed Notice of Appeal.

Apr. 20—Filed Bond on Appeal.

Apr. 20—Filed Designation of Record.

Apr. 20—Filed Statement of Points on Appeal.

May 28—Filed and Entered Order Extending Time  
for Filing Record on Appeal and Docket-  
ing the Appeal (July 15, 1956).

May 28—Mailed copies of last above order to coun-  
sel for respective parties.

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

United States of America,  
District of Montana—ss.

I, E. Warren Toole, Clerk of the United States District Court in and for the District of Montana, do hereby certify to the Honorable, the United States Court of Appeals for the Ninth Circuit, that the foregoing volume consisting of 58 pages numbered consecutively from 1 to 58 inclusive, together with the Transcript of Evidence, hereinafter mentioned (in itself consisting of 85 pages, exclusive of its cover, its index page and its Official Court Reporter's certificate page), is a full, true and correct transcript, consisting of the original papers designated by the parties, to wit: Amended Libel of Informations;



Monitions; Marshal's Returns on Notices of Seizure, including such Notices of Seizure; Claims of Owners; Minute Entries of January 5 and 12, 1956; Answers; Minute Entry of January 12, 1956; Findings of Fact and Conclusions of Law; Judgments and Decrees of Condemnation; Notices of Appeal; Bonds on Appeal; Statements of Points on Appeal; Designations of Record on Appeal; Clerk's Docket Entries and the Transcript of Evidence, and also the Orders Extending Time for Filing Record on Appeal and Docketing the Appeals, required by the rules as the Record on Appeal in Civil Cases No. 502, United States of America, Libelant, vs. One Electronic Pointmaker, also known as the Joker Machine, Serial Number X550378, Libelee, and No. 503, United States of America, Libelant, vs. One Electronic Pointmaker, also known as the Bingo Machine, Serial Number X550518, Libelee, as appears from the original records and files of said District Court in my custody as such Clerk.

I further certify that the Exhibits, which are being transmitted under Government Bill of Lading No. USCA 26506, being a machine numbered X550378, marked Plaintiff's Exhibit No. 1; a remote control box, marked Plaintiff's Exhibit No. 1A; a machine numbered X550518, marked Plaintiff's Exhibit No. 2; and a remote control box, marked Plaintiff's Exhibit No. 2A, are all of the original exhibits in said cases and that all of the same up to the time of transmittal have been in my custody as such Clerk.

Witness my hand the seal of said District Court  
at Butte, Montana, this 5th day of July, 1956.

[Seal]                      E. WARREN TOOLE,  
   Clerk,

By /s/ E. WARREN TOOLE,  
   Clerk.

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[Endorsed]: No. 15195. United States Court of  
Appeals for the Ninth Circuit. James Hannifin,  
Claimant of One Electronic Pointmaker, Also  
Known as the Joker Machine, Serial Number  
X550378, Appellant, vs. United States of America,  
Appellee, and James Hannifin, Claimant of One  
Electronic Pointmaker, Also Known as the Bingo  
Machine, Serial Number X550518, Appellant, vs.  
United States of America, Appellee. Transcript of  
Record. Appeals from the United States District  
Court for the District of Montana, Butte Division.

Filed July 9, 1956.

Docketed July 18, 1956.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

